

Medical Records

6. Retaining and Transferring Medical Records

Generally speaking, physicians must always keep the original medical record themselves. Only copies of the record should be transferred to others.

Retaining Medical Records

Regulation requires that physicians keep medical records for a certain period of time. For adult patients, the rule is that records must be retained for 10 years from the date of the last entry in the record. For patients who are children, the regulation requires that the physician keep the record until 10 years after the day on which the patient reached or would have reached the age of 18 years. However, it is prudent to maintain records for a minimum of 15 years because, in accordance with the *Limitations Act*, some legal proceedings against physicians can be brought 15 years after the act or omission on which the claim is based took place.

Physicians may also be required to retain records longer than the above time periods when they receive a request for access to personal health information. Where such a request has been made, physicians must retain the personal health information for as long as necessary to allow for an individual to take any recourse that is available to them under *PHIPA*.

The retention rules are different for physicians who cease to practise medicine, please see below for more detail. See Appendix A for the applicable regulation.

Patient Requests Transfer

If a patient requests that a physician transfer his or her records, the transfer should take place in a timely fashion. The physician may charge the patient a reasonable fee to reflect the cost of the materials used, the time required to prepare the material and the direct cost of sending the material to the requesting physician. Prepayment of the fee for a transfer of medical records may only be requested when, in the best judgment of the treating physician, the patient's health and safety will not be put at risk if the records are not transferred.

In some circumstances, it will be desirable for the transferring physician to prepare a summary of the records rather than to provide a copy of the whole record. This is acceptable to the College as long as it is acceptable to the receiving physician and the patient. The physician is still obligated to retain the original record, in its entirety, for the time period required by regulation.

The obligation to pay the account rests with the patient or with the third party who has requested the records. Fulfilling such a request is an uninsured service and reasonable attempts may be made on the part of the physician to collect the fee.

Physician Relocates

Physicians relocating their practice have the option to take the medical records with them or leave the records with a designated custodian, as long as there is an agreement that the patient will be permitted access to them, as required.

Physician Ceases Practice

There are myriad ways in which practices end and the College recommends that the physician or those responsible for winding up his or her practice act in the patients' best interests by ensuring that patients have access to their records.

When physicians cease to practice medicine (either because they no longer maintain their certificate of registration or they've died) two options are available with respect to patient records. The medical records may be transferred to another physician at the same address and phone number or they may be retained (either personally or through the use of a commercial record storage company).

Before patient records are transferred to a physician's successor, the physician or his or her representative must make a reasonable effort to give notice to patients, or where this is not reasonably possible, the physician or his or her representative must notify patients as soon as possible after the transfer has occurred.¹⁴

If the medical records pertain to family medicine or primary care, where a physician is not transferring records to another physician at the same location, the physician or his or her representative must notify each patient that the records will only be held for two years, and should suggest that patients collect their records or request a transfer of their records to another physician before this two-year period expires. Notification of patients may take place by way of a notice in the newspaper, direct communication with each patient, or in some other way that ensures that patients will receive notice. In all other situations, the rule requiring record maintenance for a minimum of 10 years will apply.

While the obligation to retain records when the physician ceases practice continues for only two years, the College recommends that, where possible, every effort should be made to ensure all patient records are transferred or remain available to patients until they find another physician.

The College notes that in many cases the physician may find it most convenient to rely on the services of a commercial record storage provider.

Destroying Medical Records

When the obligation to store medical records comes to an end, the records should be destroyed in a way that is in keeping with the obligation of maintaining confidentiality. Each year, the College complaints department receives calls from individuals who have found medical records in garbage or recycling bins, or blowing down the street. The College recommends that physicians shred all paper medical records (confidential shredding services are available for large quantities of records) and reminds physicians that electronic records must be permanently deleted from all

hard drives,¹⁵ as well as other storage mechanisms.

Physicians must not dispose of a record of personal health information unless his or her obligation to retain the record has come to an end. Physicians are reminded that obligations to retain records may arise under *PHIPA* (because a patient has requested access, for example) and disposal of the record under such circumstances would be an offence under section 72(1) of *PHIPA*.

Medical Records in a Group Practice or Employment Setting

Termination of a Group Practice Agreement

Physicians in a group practice setting must have an agreement that establishes responsibility for maintaining and transferring patient records upon dissolution.

Typically, the agreement will address such items as:

- The method for division of medical records upon termination of the practice arrangement. The agreement usually specifies a method of identifying custody of the medical records.
- Reasonable access to the content of the medical records for each physician to allow him or her to prepare medico-legal reports, defend legal actions, or respond to a complaints investigation.

If no such agreement exists, physicians dissolving a group practice must agree upon a system to determine who is the ‘most responsible physician’ for each record. For example, the physician who has created the greatest percentage of the entries in a particular patient record may be expected to continue to maintain it.¹⁶

Ask the Patient

Ultimately, if a group practice dissolves, the patient’s best interests will likely be served by ascertaining which physician the patient wishes to continue seeing. If the patient is following a physician to a different practice location, the records should be transferred, and physicians should agree how the cost of copying and transferring records will be divided within the group. In the case of planned group practice dissolution, the cost cannot be charged to the patient.

Unexpected Dissolution of a Group Practice

An unexpected dissolution of a group practice creates special difficulties. Ideally, physicians involved should amicably agree upon a strategy for informing patients and dealing with the medical records. In the case of a sudden, unforeseen departure of a partner or associate, records should be kept at the original location until the patient directs where he or she wishes to receive ongoing health care. Reasonable access to medical records must be given to all former partners and associates.

When the Physician is an Employee

Physicians who are employees should satisfy themselves that there is an agreement with the employer about patient record retention and transfer.
