



THE MEDICAL RECORD: CONFIDENTIALITY, ACCESS AND DISCLOSURE (UPDATE 2000)

The CMA affirms that medical records are confidential documents. Although the records are the property of the physician or health care institution that compiled them, patients have a right to examine their records and to obtain a copy of the information contained in them. Physicians should provide an explanation of the medical record to the patient when requested to do so. Unless the law requires otherwise, or if the maintenance of confidentiality would result in a significant risk of substantial harm to others or to the patient if the patient is incompetent, patient authorization is necessary for the disclosure of information contained in medical records to third parties.

The medical record is compiled primarily to assist physicians and other health care professionals in treating patients. The record contains information on past and present conditions and treatment, family history, diagnosis, progress notes, consultation reports and laboratory tests. It may also include opinions on the condition and care of the patient. The record provides for continuity of patient care and maintenance of an optimal standard of care.

Secondary uses for the information contained in the medical record include epidemiologic studies, research, education, remuneration for services rendered and quality assurance.

The following principles apply to both primary and secondary uses of the patient record.

Confidentiality

Medical records are confidential documents. The CMA Code of Ethics (1996) states that a physician should "respect the patient's right to confidentiality except when this right conflicts with your responsibility to the law, or when the maintenance of confidentiality would result in a significant risk of substantial harm to others or to the patient if the patient is incompetent; in such cases, take all reasonable steps to inform the patient that confidentiality will be breached." This principle recognizes that patients have control over access to and disclosure of the information compiled about them in the record. The principle of confidentiality has also been clearly expressed in Canadian law by the Supreme Court of Canada (*McInerney v. MacDonald* [1992] 2 SCR 138).

There are some exceptions to a patient's right to confidentiality. For example, many jurisdictions require physicians to disclose patient information to government agencies in order to substantiate payment claims and to report some infectious diseases, child abuse and medically unfit drivers. Physicians should be aware of the legal requirements in their province or territory.

Patient access

In *McInerney v. MacDonald* the Supreme Court of Canada ruled that the medical record belongs to the physician or health care institution that compiled it. The court also ruled that the patient has the right to examine the record and to copy all the information contained in it, including consultation and other reports obtained from physicians.

The CMA holds that physicians should be prepared to provide a copy of the medical record to the patient upon request and to explain the information contained in it. Denial of access may be defensible in cases in which the physician reasonably believes that the patient or others will suffer substantial physical, mental or emotional harm because of information contained in the record. In *McInerney v. MacDonald* the Supreme Court of Canada explained that such exceptions are rare and that the onus is on the physician to justify denial of access.

Disclosure to third parties

The Code of Ethics (1996) states that a physician must, "upon a patient's request, provide a third party with a copy of his or her medical record, unless there is a compelling reason to believe that information contained in the record will result in substantial harm to the patient or others." This obligation recognizes the patient's right to control disclosure of his or her medical information to

others. Patient authorization for such disclosure to a third party (e.g., lawyer, insurance adjuster or employer) must be obtained and should always be specific. Written authorization for such disclosure is desirable. Physicians should be cognizant of the fact that patients may not always be aware of the contents of the medical record and should make efforts to inform the patient about what might be disclosed.

Transfer

If the medical record is to be transferred to another physician for the purposes of patient care the CMA recommends that the physician who compiled the medical record retain the original documents and forward copies or abstracts.

Fees

It is appropriate for physicians to charge a reasonable fee for preparing and reproducing the information in the medical record. In determining such fees, the Code of Ethics (1996) states that a physician must "consider both the nature of the service provided and the ability of the patient to pay, and be prepared to discuss the fee with the patient".