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## MEDICAL RECORDS

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### WHAT ARE MEDICAL RECORDS

Medical record is a broad generic term for the information that is collected about a patient. It includes:

- (a) Progress/ clinical notes;
- (b) Test results;
- (c) Photographs/ videos; and
- (d) Letters to/from other doctors/ specialists.
- (e) Appointment records, diaries, and account systems

Correspondence between a medical practitioner and their solicitor or medical indemnity insurer about a patient is not considered as a medical record and should be kept separate.

### WHO OWNS THE MEDICAL RECORDS

In private practice, although the medical practitioner writes the medical records, ownership of the medical records may depend on any agreement or contract between the medical practitioner and the practice, or the structure of the medical practice. It is advisable to clarify at the outset.

### HOW SHOULD MEDICAL RECORDS BE STORED

Health Privacy Principle (**HPP**) 4, which can be found in Schedule 1 of the *Health Records Act 2001* (Vic) (**HRA**), requires organisations to take reasonable steps to protect the health information that it holds from misuse and loss and from unauthorised access, modification or disclosure. It is up to the practitioners to implement measures that comply with HPP 4. Medical records can be stored on paper or in digital format.

### HOW LONG SHOULD MEDICAL RECORDS BE KEPT

HPP 4.2(b) requires medical records to be kept:

- a) In the case of health information that was collected while the individual was a child, until the individual attains the age of 25 years; or

- b) In any case, for 7 years after the last occasion on which a health service was provided to the individual,

whichever is the later.

## HOW SHOULD I DISPOSE OF MEDICAL RECORDS

Medical records can be disposed in any way as long as the method chosen preserves the confidentiality of the patient.

HPP 4.3 requires practitioners to make a written note of the name of the individual, the period of time covered by the medical record and date on which the medical record is disposed before disposing the medical record.

## TRANSFERRING MEDICAL RECORDS

HPP 4.4 requires practitioners who transfers medical records to another individual or organisation to keep a written note of the name and address of the individual or organisation to whom the medical records were transferred to.

## CAN PATIENTS ACCESS THEIR MEDICAL RECORDS

For records created after 21 December 2001, the *Privacy Act 1988* (Cth) gives patients the right to access their medical records through Principle 12 of the Australian Privacy Principles (APP). For records created after 1 July 2002, section 25 of the HRA also gives patients the right to access their medical records.

A patient or their authorised representative must be provided access to the medical records in the ways outlined in sections 28 and 29 of the HRA which include:

- (a) Inspecting the medical records;
- (b) A print out of the medical records;
- (c) Receiving a copy of the medical records; and
- (d) Having the medical records explained to the patient.

## CAN I CHARGE A FEE FOR ACCESSING MEDICAL RECORDS

Section 32 of the HRA allows some practitioners to charge a fee if a maximum fee has been prescribed for that manner of access. The manner of access which have maximum fees prescribed are found in schedules 1 and 2 of the *Health Records Regulations 2023* (Vic). *A detailed listing of the fees can be found in the Medical Records Fees Fact Sheet.*

## CAN I REFUSE TO PROVIDE MEDICAL RECORDS

There are limited situations when a medical practitioner can refuse to provide medical records to a patient as outlined in sections 26 and 27 of the HRA which respectively include:

- (a) The disclosure will pose a serious threat to the life or health of the patient or any other individual.
- (b) The medical records are subject to confidentiality; and

## WHO HAS THE RIGHT TO ACCESS A DECEASED PATIENT'S MEDICAL RECORDS

Section 95(2) of the HRA allows the legal representative (usually an executor) to access the deceased patient's medical records.

A registered medical practitioner may also be required under the *Coroners Act 2008* (Vic) to assist in the investigation of a deceased patient's death, or produce medical records in connection with that patient.

## WHAT MUST I DO IF I CLOSE/ SELL MY MEDICAL PRACTICE

The most important consideration when closing a practice is continuity of care for your patients. This involves giving advance notice and recommending alternative options for your patients to continue with their treatment.

HPP 10.2 requires practitioners to publish in a newspaper which circulates in the locality of the practice that the practice is about to be closed/ sold and the manner in which the practitioner proposes to deal with the medical records held by the practice.

Practitioners should also, where appropriate, take any other steps to notify their patients such as posting on their website, placing signs within the practice and writing to the patients.

HPP 10.3 requires practitioners to make a decision, not earlier than 21 days after publishing the notice, on whether they will:

- (a) Retain the medical records;
- (b) Transfer the medical records to a practitioner who is taking over the practice;
- (c) Transfer the medical records to the patient; or
- (d) Transfer the medical records to another practitioner nominated by the patient.

[Health Records Act 2001 \(Vic\)](#)

[Health Records Regulations 2023 \(Vic\)](#)

[Privacy Act 1988 \(Cth\)](#)

[Coroners Act 2008 \(Vic\)](#)