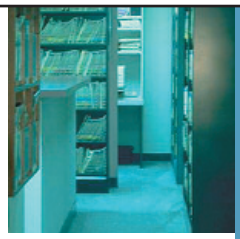

Can I see the medical records?

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General practitioners frequently receive requests for access to patients' medical records, including obtaining a copy of the medical records. These requests may be made by patients, their solicitors or other third parties. This article examines medicolegal issues around requests for access to medical records, with an emphasis on the changes that were introduced by the recent amendments to the Privacy Act.

Case history

Miss Trish Campbell had been a patient at Dr Collins' practice for many years. Her general health was good. Her past medical history included several episodes of depression and a termination of pregnancy in 1995. Soon after the termination of pregnancy, Miss Campbell had complained of a generalised itch that was initially attributed to scabies. Several chemical treatments failed to result in any improvement in her symptoms. Dr Collins referred her to a dermatologist who could find no specific skin abnormality. The dermatologist suggested that the patient may be suffering from parasitosis. Miss Campbell remained convinced that she was suffering from scabies related to an infestation of her home. She moved to new accommodation but this did not result in any improvement in her pruritus. After considerable discussion, the patient reluctantly agreed to see a general physician and a psychiatrist. The physician could find no underlying medical cause for the pruritus. The psychiatrist suggested that Miss Campbell commence a trial of antipsychotic medication for management of her parasitosis but the patient refused. She continued to use chemical sprays around her home and apply various chemical skin treatments. Dr Collins and the patient subsequently decided it was best not to focus on the underlying cause of the pruritus with a view to controlling rather than curing her symptoms. Over the ensuing years, the patient's complaints of pruritus gradually resolved. She continued however, to experience depression that was treated with medication and cognitive behavioural therapy.

On 2nd June 2003, Miss Campbell was involved in a motor vehicle accident (MVA). She suffered a fractured clavicle and a 'whiplash' injury. Dr Collins referred Miss Campbell to an orthopaedic surgeon for assessment. She was treated with intensive physiotherapy and her neck pain slowly settled over the ensuing months. Soon after the accident Miss Campbell completed a form for accident compensation which included a signed authority to obtain access to her medical records 'relevant to the claim'. Six months later, in December 2003, Dr Collins received a request from the solicitors acting for the motor accident authority. The solicitors' letter stated that they required a complete copy of Miss Campbell's medical records. The authority signed by Miss Campbell on 19th June 2003 was enclosed. Dr Collins was concerned about releasing a complete copy of Miss Campbell's medical records to the solicitors and could not see how the patient's past medical history was relevant to the MVA claim.

Medicolegal issues

The general practitioner sought advice from his medical defence organisation (MDO) about how to respond to the solicitors' letter. The MDO's adviser agreed that the patient's signed authority was limited in that it did not specify the release of a complete copy of the patient's medical records. The GP was advised he had a number of options:

- He could write to the solicitors and ask them to provide details of the claim so the GP could determine which records were 'relevant to the claim'. These records could then be forwarded to the solicitors
- The GP could offer to prepare a medical report, instead of providing a copy of the medical records to the solicitors
- The GP could write to the solicitors and request an authority from the patient which enabled the release of a complete copy of her medical records
- The GP could contact the patient and advise her that a request had been received from the motor accident authority for a complete copy of her medical records. The GP could offer to go through the medical records with the patient so that she was aware of their contents and could consider whether she was willing to release the records to the solicitors. If the patient agreed, the medical records could then be sent to the solicitors. A written

authority to that effect should be obtained if possible.

Discussion

General practitioners frequently receive requests for access to, or copies of, medical records from patients and other sources. The amendments to the Privacy Act that were introduced on 21 December 2001, brought a number of significant changes in the way in which requests for access to medical records should be managed.

Am I required to provide access to and/or a copy of the medical records to a patient and/or their solicitor?

Yes, unless particular circumstances apply that allow the GP to deny access.

What are the situations in which I can refuse to provide a patient access to their medical records?

There are a limited number of situations when a request for access may be denied. These include:

- access would pose a serious threat to the life or health of any individual. This may include physical or mental harm
- privacy of others may be affected
- the request is vexatious or frivolous
- information relates to existing or anticipated legal proceedings. Information that would not be discoverable in those proceedings may be withheld
- access would prejudice negotiations with the patient
- access would be unlawful
- denying access is required or authorised by, or under law
- law enforcement and national security
- commercially sensitive evaluative information.

If information is withheld, the patient must be given reasons for the denial of access, unless such a disclosure would prejudice an investigation against fraud or other unlawful activity.

Should a request for a copy of the medical records be made in writing?

It is not legally necessary for a patient to request access to their medical records in writing. However, a note should be made in the medical records that access has been provided. In some situations, it may be preferable to obtain the patient's request in writing. Any requests for access to medical records by a third party should be in writing with an appropriate authority from the patient, if required. It should be noted that patient authority is not required in certain situations such as a valid subpoena or search warrant.

How much time do I have to process a request for access to medical records?

The Privacy Commissioner recommends that when a written request for access is received, an acknowledgment should be sent within 14 days. The acknowledgment should include an indication of the costs (if any) involved in processing the request. As a guide, the Privacy Commissioner recommends that the total time for processing a request for access should be no more than 30 days.

Can I charge for providing access to the medical records? Can I charge for providing a patient or third party with a copy of the medical records?

It is unlawful under the Privacy Act to charge a patient a fee for requesting access to their medical records. A fee may be charged to cover the cost of providing access to the medical records (eg. photocopying, printing and administrative costs) as long as the fee is not excessive and does not discourage a patient from accessing their records. The Privacy Commissioner suggests GPs should consider the patient's individual circumstances and capacity to pay for access when considering what fees may apply.

Can I provide a patient or their solicitor access to a specialist's letter which is contained in the medical records?

Yes. The right of access to the medical records includes specialists' reports and letters. This is regardless of whether or not the specialist's letter states that it is not to be released to a third party without the permission of the specialist.

Who owns the medical records?

The medical practitioner who has care and control of the records maintains ownership of the medical records. The Privacy Act gives patients a right of access to their medical records, not ownership.

Risk management strategies

The provisions in the Privacy Act are based around 10 National Privacy Principles (NPPs) that represent the minimum privacy standards for handling patients' information.[1] The aim of the NPPs is to promote greater openness between medical practitioners and their patients regarding the handling of health information. National Privacy Principles 6, sets out a GP's obligation with respect to providing patients access to their medical records and, where reasonable, correcting information at the request of patients. General practitioners and their staff need to have policies and procedures in place to ensure compliance with the requirements of the Privacy Act.

Summary of important points

- Under the amendments to the Privacy Act, GPs are obliged to provide patients with a copy of their medical records – if requested – unless certain defined exceptions apply.
- If in doubt about whether to provide access to a patient's medical records, GPs should seek advice from their medical defence organisation or other legal adviser.

Conflict of interest: none declared.

Reference

1. Office of the Federal Privacy Commissioner's. Guidelines available available at: www.privacy.gov.au.

Resource

The Royal Australian College of General Practitioners. Handbook for the Management of Health Information in Private Medical Practice. 1st edn. South Melbourne: The RACGP, 2002.

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