



GUIDELINE

Transfer of Patient Records

STATUS:	APPROVED
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A. Providing Patient Records to Patients

PREAMBLE

This guideline has been developed jointly by the Saskatchewan Medical Association (the SMA) and the College of Physicians and Surgeons (The College) to guide physicians in dealing with the transfer of copies of patient records from a physician to their patients.

Patient medical records belong to the physician and not to the patient. Physicians have a responsibility to ensure that the record is secured and maintained accurately, and that information is not altered. The patient has a right to access the medical information in the record, and to obtain a copy of documents in the record, but not to obtain the record itself.

Saskatchewan legislation, [The Health Information Protection Act](#), confirms that that patients have a right of access to all of the information in their record unless there is a specific reason which justifies withholding a portion of the information in the record. This right of access includes all information in the record, including reports of consultants and other records.

The obligation to provide information to patients is also an ethical obligation. Paragraph 19 of the [Code of Ethics and Professionalism](#) of the Canadian Medical Association provides as follows:

19. Provide the patient or a third party with a copy of their medical record upon the patient's request, unless there is a compelling reason to believe that information contained in the record will result in substantial harm to the patient or others.

THE GUIDELINE

1. Patients should never be given original medical records. This could result in loss of the file, removal of relevant portions of the patient file, and an inability for the physician to deal with future complaints, litigation or enquiries;
2. A copy of a requested record should be provided without undue delay;
3. A physician has a right to charge a reasonable fee in relation to photocopying a patient record. If a fee is to be charged, that fee should be fair and represent cost recovery including staff time and overhead costs. The Saskatchewan Medical Association publishes the *SMA Fee Guide (for uninsured services)*, which on pages 4 and 5 of the Introduction and Codes 511A, 512A and 810A on page A2, suggests what the Saskatchewan Medical Association considers to be a fair fee where paper records are to be photocopied;
4. If the patient seeks a copy of an electronic medical record, the physician should assess what will be a reasonable fee for providing the record. In some circumstances it may be possible to provide an electronic copy of the record to a patient at little cost to the physician;
5. It has been customary not to charge a patient for a copy of relevant portions of a patient record if the physician who has control of the record has moved or otherwise required the patient to transfer their care to another physician;
6. The physician should consider the patient's ability to pay when considering whether a fee will be charged and, if a fee will be charged, the amount of that fee;
7. Charging a fee for a copy of a record should never impede the orderly and timely transfer of required information;
8. If a fee is to be charged, and if the record is not immediately required for patient care or for some other pressing reason, it is reasonable for a physician to ask for some assurance of payment before a copy of the requested record is made;
9. [*The Health Information Protection Act*](#), section 38 sets out circumstances in which a patient may be denied access to all or part of the patient's medical records. The most common situations are:
 - (a) in the physician's opinion the information could reasonably be expected to endanger the mental or physical health or the safety of the patient or another person;
 - (b) disclosing the information would reveal personal health information about another person who has not expressly consented to the disclosure;
 - (c) disclosure of the information could identify a third party who supplied the information in confidence.

10. If a physician withholds all or part of a patient record, the physician must advise the patient that has been done and advise the patient of the patient's right to have the decision reviewed by the Privacy Commissioner ([The Health Information Protection Act](#), section 36).

B. Providing Patient Records to Third Parties

PREAMBLE

This guideline has been developed jointly by the SMA and the College to guide physicians in dealing with the transfer of copies of patient records from a physician to third parties.

Patient medical records belong to the physician, and not to the patient. Physicians have a responsibility to ensure that the record is secured and maintained accurately, and that information is not altered. The patient has a right to access the medical information in the record, and to obtain a copy of documents in the record, but not to obtain the record itself. That includes a right to authorize other persons to obtain copies of their medical information.

Saskatchewan legislation, [The Health Information Protection Act](#), confirms that patients have a right of access to all of the information in their record, unless there is a specific reason which justifies withholding a portion of the information in the record. This right of access includes all information in the record, including reports of consultants and other records.

The obligation to provide information to patients, or to a third party at the patient's request, is also an ethical obligation. Paragraph 19 of the [Code of Ethics and Professionalism](#) of the Canadian Medical Association provides as follows:

19. Provide the patient or a third party with a copy of their medical record upon the patient's request, unless there is a compelling reason to believe that information contained in the record will result in substantial harm to the patient or others.

It is critical to ensure that either informed patient consent is obtained to transfer a record to a third party, or that the transfer is authorized by law (see section 27 of [The Health Information Protection Act](#)).

THE GUIDELINE

1. Physicians have an obligation to provide copies of patient records to third parties if properly authorized by the patient;
2. Physicians should take appropriate steps to satisfy themselves that, if the request for a copy of a patient record is based upon the patient's request, the patient has given informed consent to the transfer;

3. If the authorization is in writing, and the authorization is dated a substantial time previous to the request, this may include an obligation to ensure that the patient still agrees to the transfer of the copy of the record;
4. If providing the requested information would disclose information that is particularly sensitive to the patient, or information that appears not to be required for the purpose for which the information is to be provided to the third party, the physician may be ethically required to ensure that the patient agrees to the transfer of the record;
5. If the request is made based upon a legal requirement, it is reasonable to expect that the person requesting the information will provide the authorization for the request, (court order, a copy of the legislation, etc.) before the documents are provided;
6. A copy of a requested record should be provided without undue delay;
7. A physician has a right to charge a fee in relation to photocopying or reproducing a patient record. If a fee is to be charged, that fee should be fair and represent cost recovery including staff time and overhead costs. The Saskatchewan Medical Association publishes the [SMA Fee Guide \(uninsured services\)](#), which on pages 4 and 5 of the Introduction and Codes 511A, 512A and 810A on page A2 suggests what the Saskatchewan Medical Association considers to be a fair fee where paper records are to be photocopied;
8. If the record is not immediately required for patient care or for some other pressing reason, it is reasonable for a physician to ask for some assurance of payment before a copy of the requested record is made;
9. If, in addition to requesting a copy of a patient record, the third party requests an opinion, or wishes to speak to the physician pertaining to the care of the patient, it is reasonable for the physician to charge a reasonable fee for the time involved in discussing care provided to the patient, or in providing an opinion to the third party.

C. Transferring Patient Records between Physicians

PREAMBLE

The College and the SMA are regularly consulted with respect to disputes that arise when a physician leaves a medical practice and establishes a new practice. This guideline has been developed jointly by the SMA and the College to guide physicians in dealing with the transfer of patient records from one physician to another physician.

Saskatchewan legislation, [The Health Information Protection Act](#) confirms that patient medical records belong to the physician and not to the patient. The physician has a responsibility to ensure that the record is secured and maintained accurately and that information is not altered. The patient has a right to access the medical information in the record, and to obtain a copy of documents in the record, but not to obtain the record itself.

There are a number of situations in which a physician may need to access an old medical record. Examples include a billing review by the Joint Medical Professional Review Committee, complaints to the College of Physicians and Surgeons and legal proceedings. It is therefore essential that physicians maintain an ability to access medical records that they have created and assure their security.

While it can be difficult to address some of the situations in which a physician is asked to transfer patient records to another physician, physicians must bear in mind that a primary ethical obligation is to cooperate with other physicians to optimize patient care. Paragraphs 31 and 36 of the *Code of Ethics and Professionalism* of the Canadian Medical Association state:

31. Treat your colleagues with dignity and as persons worthy of respect. Colleagues include all learners, health care partners, and members of the health care team.

36. Support interdisciplinary team-based practices; foster team collaboration and a shared accountability for patient care.

TRANSFERRING PAPER RECORDS BETWEEN PHYSICIANS

The SMA, the College and CMPA all recommend that the clinic that owns the record should generally keep the original record, only providing a photocopy if requested. This is so for a variety of reasons:

1. The file could be lost in transit;
2. The patient may wish to return to the clinic for care, either on an episodic or permanent basis. The clinic will then need to obtain access to the medical file from the departing physician;
3. If the clinic needs access to the file at some later date, but the patient refuses permission to allow access, the person having control of the file may not be able to allow access;
4. The clinic has no control over the file after it leaves its possession and will have no proof of treatment given to the patient while at the clinic. This could make it very difficult to respond to complaints or court actions.

The SMA and College have concluded that the following principles apply to ownership of paper medical records:

1. Unless there is a specific agreement to the contrary, patient records belong to the owner of the practice where the patient is seen;
2. The same principles of ownership apply if the clinic is not owned by physicians. In the absence of an agreement to the contrary, the patient records associated with such clinics will be owned by the entity that owns the clinic (e.g. district health boards, corporations, etc.);
3. If a departing physician was an employee of the clinic, the physician is usually not entitled to take the records for the patients that he/she will continue to see, unless the clinic agrees to transfer the patient records;

4. A departing physician who was a partner in a medical practice is not generally entitled to take any of the assets of the partnership, including patient records. Usually, the physician leaving will not continue as a partner in the practice. Usually, the partnership will continue as a legal entity with the remaining partners. Usually, the assets of the partnership (including the patient records) will continue to be owned by the partnership. The partners may agree to allow the departing partner to remove original patient records for patients that he/she will continue to see;
5. Many physicians practice in an association. This means that the physicians in the practice will share expenses but will not join together to own the assets of the practice. Not all of these agreements are well-documented and it can be difficult in some circumstances to determine who owns what assets in the absence of a written agreement. When a physician leaves such an association, it can be difficult to determine exactly who is entitled to the patient records. As a general rule, if the patients in the practice are seen by more than one physician, it is likely that those patient records will continue to be owned by the clinic. This would mean that a departing physician does not have a right to take patient records to a new location. If the patients were seen by only one physician, the right of that physician to take the patient records pertaining to those patients will be dependent upon the nature of the relationships within that association. In some circumstances, the right to remove patient records may be determined by prior agreement between the physicians in the clinic.

OUR RECOMMENDATIONS - PAPER RECORDS

The College and the SMA suggest that all medical practices should establish a written policy dealing with ownership of, and control over, medical records of patients who are seen at the clinic. Such a policy will help to avoid disputes and should address the following issues:

1. Who owns patient medical records if a patient is seen by more than one physician in the medical practice;
2. Who owns patient medical records if a patient is seen by only one physician in the medical practice;
3. If a physician who leaves the medical practice seeks a transfer of medical records pertaining to patients of the medical practice what charge, if any, will be made by the medical practice;
4. If copies of some records will be provided at no cost, what records will be so provided.

THE GUIDELINE – PAPER RECORDS

The following principles apply to a request for a transfer from one physician to another physician. There may be unusual circumstances that make the application of these principles impractical, but generally physicians should follow these principles:

1. A medical practice should retain the original records in accordance with the requirements of the College bylaws;
2. Patient files should only be transferred to another physician with the express or implied consent of the patient. It is reasonable to assume that there is implied consent to transfer a patient record to a physician who is leaving a clinic if that physician has been the patient's primary physician, unless there is information that indicates that the patient will not continue to receive treatment from the departing physician. The departing physician who requests information or copies of patient records has an ethical obligation to only request information for patients for whom the physician expects to provide ongoing care. If there is doubt whether there is express or implied consent to the transfer of the patient record, the clinic can require authorization from the patient;
3. A copy of a requested record should be provided without undue delay;
4. It has been customary not to charge a colleague for a copy of relevant portions of a patient record. This is especially so if the physician who has control of the record has moved or otherwise required a patient to transfer their care to another physician;
5. A request for payment from another physician may be justified if there have been repeated requests for transfer of information relating to that patient, if the patient has transferred voluntarily to another physician in the locality, if the request is for a copy of a large portion of a patient file, or if the request requires considerable expenditure of physician or staff time.
6. If a fee is to be charged, that fee should be fair and represent cost recovery including staff time and overhead costs. The Saskatchewan Medical Association publishes the [SMA Fee Guide \(uninsured services\)](#) which on pages 4 and 5 of the Introduction and Codes 511A, 512A and 810A on page A2 suggests what the Saskatchewan Medical Association considers to be a fair fee;
7. Charging a fee for a copy of a record should never impede the orderly and timely transfer of required information.
8. If a fee is to be charged, and if the record is not immediately required for patient care, it is reasonable for a physician to ask for some assurance of payment before a copy of the requested record is made.

ADDITIONAL COMMON CONSIDERATIONS RELATING TO THIS GUIDELINE

There are some circumstances in which it may be more practical to transfer original patient files, rather than to transfer a copy of patient files to a physician.

If a physician with an established practice moves to another clinic and the departing physician has provided all, or nearly all, of the care to a patient, it may be more practical to transfer the entire file than to leave the file at the existing clinic. If patient care has been shared between the physicians in the clinic, but the patient will be transferring their care to the departing physician, the clinic may want to provide the patient file to the departing physician to allow that physician to photocopy relevant portions of the record, and return the original.

There are some circumstances where a file will be sent to a hospital or other agency to assist in providing care for the patient at that location, with the file then returned to the clinic. In such circumstances the clinic should:

1. Consider whether patient authorization is required (see above);
2. List the patient files that have been so transferred and make a record when those files are returned;
3. Ensure that the files are transferred by a secure method to prevent loss in transit;
4. If the files are to be transferred temporarily to allow for them to be copied, the medical practice and the departing physician should agree on a date when those files will be returned;
5. If the clinic transfers the files permanently, the medical practice and the departing physician should enter into an agreement that the departing physician will, upon the request of the medical practice, allow the medical practice access to the patient files that were transferred if needed by the medical practice (this could be required to deal with litigation, a fee review by the Joint Medical Professional Review Committee, etc.).

TRANSFERRING ELECTRONIC PATIENT RECORDS BETWEEN PHYSICIANS

Electronic patient records can, in some circumstances, be easily transferred between physicians with little cost or disruption to either the clinic providing the record, or the physician receiving the record.

Physicians should consider whether a request by another physician for copies of patient records can be met by arranging for the transfer of an electronic copy of the patient records.

The following principles apply to a request for a transfer of electronic patient records from one physician to another physician. There may be unusual circumstances that make the application of these principles impractical, but generally physicians should follow these principles:

1. A medical practice that arranges to provide a copy of an electronic patient record to another physician should retain the original records in accordance with the requirements of the College bylaws;
2. Patient files should only be transferred to another physician with the express or implied consent of the patient. It is reasonable to assume that there is implied consent to transfer a patient record to a physician who is leaving a clinic if that physician has been the patient's primary physician, unless there is information that indicates that the patient will not continue to receive treatment from the departing physician. The departing physician who requests information or copies of patient records has an ethical obligation to only request information for patients for whom the physician expects to provide ongoing care. If there is doubt whether there is express or implied consent to the transfer of the patient record, the clinic can require authorization from the patient;

3. The College interprets section 27(2) of [The Health Information Protection Act](#) to mean that patient consent is not required for a clinic to transfer a copy of electronic patient records to a physician who leaves a clinic and who reasonably expects to provide ongoing care to patients of the clinic. Section 27(2) states:

Disclosure

27(2) A subject individual is deemed to consent to the disclosure of personal health information:

- (a) for the purpose for which the information was collected by the trustee or for a purpose that is consistent with that purpose;*
 - (b) for the purpose of arranging, assessing the need for, providing, continuing, or supporting the provision of, a service requested or required by the subject individual;*
4. A physician who, upon leaving a clinic, requests that the clinic make available an electronic copy of patient records, has an ethical obligation to only request a copy of records for patients who the physician reasonably expects to continue to provide care;
 5. A copy of a requested record should be provided without undue delay;
 6. A physician who, upon leaving a clinic, requests that the clinic make available an electronic copy of patient records, should pay the reasonable costs associated with the copying of the patient records;
 7. It has been customary not to charge a colleague for a copy of relevant portions of a patient record. This is especially so if the physician who has control of the record has moved or otherwise required a patient to transfer their care to another physician;
 8. If a fee is to be charged for a copy of a record, that fee should be fair and represent cost recovery including staff time and overhead costs;
 9. Charging a fee for a copy of a record should never impede the orderly and timely transfer of required information.
 10. If a fee is to be charged, and if the record is not immediately required for patient care, it is reasonable for a physician to ask for some assurance of payment before a copy of the requested record is made.