

Deadbeat

TRUSTS AND ESTATES SECTION / SECTION DES FIDUCIES ET SUCCESSIONS

Estate Obligations for Records Retention: Or Transfer: Patient Medical Records

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Ed. note: Lawyers are generally familiar with the uncertainty surrounding storage or destruction of closed client legal files. The revisions to the Limitations Act may have as-yet undetermined effects on standard practice. The same kinds of issues arise in the other professions, and will also affect the duties imposed on Estate Trustees, Guardians of Property, and Powers of Attorney.

Ontario physicians who cease to practice medicine have very specific responsibilities with respect to the storage and disposition of medical records. The College of Physicians & Surgeons of Ontario (CPSO) has issued guidelines with respect to the disposition of medical records in order to accomplish two things: 1) Facilitate continuity of healthcare by ensuring that patient information is available to those patients who require it, and 2) Protect the physician in the event of a medico-legal issue regarding a patient, where the patient record is the first line of defence in a malpractice suit.

The physician owns the record; the paper or other media upon which the patient information can be found. However, the patient is entitled to the information. To transfer the information to the patient or to another doctor, the patient must sign a form for its release then the original doctor supplies a copy of the file or a summary thereof. Furthermore, the physician is able to charge a fee to the patient (or authorized recipient), as this service does not fall under the listing of insured services. The Ontario Medical Association publishes a suggested fee schedule for uninsured services such as the transfer of patient records.

The obligations placed on a physician ceasing to practice (i.e. retired, license revoked, relocated, estate of deceased) with respect to the disposition of patient files are quite detailed and can become somewhat onerous. The CPSO Policy #11-00 re: **Retention of Medical Records** states:

19. (1) A member shall retain the records required by regulation for at least ten years after the date of the last entry in the record, or until ten years after the day on which the patient reached or

would have reached the age of eighteen years, or until the member ceases to practise medicine, whichever occurs first subject to subsection (2).

(2) For records of family medicine and primary care, a member who ceases to practice medicine shall,

a) Transfer them to a member with the same address and telephone number; or

b) Notify each patient that the records will be destroyed two years after the notification and that the patient may obtain the records or have the member transfer the records to another physician within the two years.

(3) No person shall destroy records of family medicine or primary care except in accordance with subsection (1) or at least two years after compliance with clause (2) (b). O. Reg. 241/94, s. 2.

Furthermore, with respect to **Transferring Medical Records**, the Policy states:

When transferring patient records, the transferring physician should provide only copies of the records and retain the originals in a secure location for at least the prescribed period of time. When records are eventually destroyed, this should be done in a way that ensures confidentiality is maintained.

It is the responsibility of the physician, and thereafter his or her estate, to see to it that the proper arrangements are made for the disposition of patient records. For more information about the proper care for patient records, contact the Physician Advisory Services at the CPSO

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Legislative References: *Regulated Health Professions Act*, 1991, S.O. 1991, c. 18, as amended; Ontario Regulations 856/93 and 241/94, as amended (made under the *Medicine Act*, 1991); *Health Insurance Act*, s. 37.1