

NORTH STAFFORDSHIRE LOCAL MEDICAL COMMITTEE

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ACCESS TO GENERAL PRACTITIONER RECORDS

A Procedure Approved by North Staffordshire Local Medical Committee for use when General Practitioner Records are required for the purposes of Litigation

1. Form of consent.

- I. Patients who are asked to consent to the release of medical records often assume that they are consenting merely to release of records relating to a specific accident, and solely to the expert appointed by their solicitor. They may not realise that records relating to apparently irrelevant matters may be included, and that ultimately the records may be made available to third parties, including their opponent's expert, solicitors, and/or the Court. The consent form approved for use under this protocol therefore specifies that consent is given to the release of all the medical records requested by the solicitor, and makes clear the extent of that disclosure.
- II. The approved consent form requires the solicitor to specify the extent of the medical records required. For example, the solicitor may limit the request to records relating to a specific medical condition; records dating from a particular event; or to all records except for those relating to certain specified conditions.
- III. The consent form indicates whether any claim is contemplated against the general practitioner; against another general practitioner; or against a health authority or hospital trust. The GP requires this information only in order to decide whether medical defence organisations are to be involved. The existence of a clinical negligence claim is not a ground for refusal to release the medical records

2. Points on Disclosure of Medical Records

- I. Solicitors must appreciate that GPs have a duty to examine the medical records in all cases before disclosure, to ensure that references to third parties are not disclosed without the informed consent of that third party, and to ensure that the patient does not become aware of any matters recorded in their notes which should not be disclosed to them for medical reasons.
- II. The North Staffordshire LMC recommends that GPs do not allow their original records to leave their premises, as they are required to have access to their records at all times in case they are consulted by the patient. If access is required to the original records, therefore, they should be viewed at the GP's surgery.
- III. Solicitors ought to be aware of the implied undertakings which apply to material disclosed during the course of proceedings, specifically that material obtained on discovery or exchange is confidential, and must not be released to a third party (see Part 31.22 CPR 1998).

3. Payment of the General Practitioner's Fee

- I. In respect of copies of medical records obtained under section 7(l)© Data Protection Act 1998 a maximum fee (currently £50) is chargeable by the GP (see The Data Protection (Subject Access) (Fees and Miscellaneous Provisions Regulations 2000 - SI 191 of 2000).
- II. The prescribed fee comprises the GPs time in examining the notes, photocopying costs and postage and packing by Recorded Delivery post. In almost every case the actual cost to the GP is likely to exceed £50 but it is accepted that this amount cannot be exceeded.
- III. If the records requested exist solely in electronic format the maximum prescribed fee is £10.
- IV. The prescribed fees for copies are still payable even if a patient has been treated in a 40 day period prior to the request although there can be no fee for merely inspecting the records.
- V. The solicitor should therefore assume that the maximum fee of £50 will be charged in every case and the cheque should be sent with this consent form. If the notes are slight the GP may at his discretion refund part of the fee to the solicitor. If the notes exist solely in electronic format a reimbursing cheque of £40 must be sent with the copy records.
- VI. Single sided copies are preferred and copies of records should be sent by Recorded Delivery post with a receipt for the fee.

4. Timescale for Complying with a request for Disclosure

Where the request for disclosure is made under the 1998 Act, the GP is required to comply within **40** days of the request and payment of the fee.

5. Withholding Sensitive Material

- I. If sensitive material, which might harm the patient if it were disclosed to him/her, is withheld by the GP, then this must be stated to the solicitor when the copy records are supplied. The solicitor must appreciate that the fact that sensitive material has been withheld from the records should not be disclosed to the patient.
- II. If the solicitor wishes to clarify the nature of the sensitive material withheld, in case that material may be relevant to the issues in the case, then he/she should speak to the GP by telephone.

6. Queries After Disclosure

- I. Where the solicitor requires clarification or interpretation of any part of the medical records disclosed, or additional records are sought, the GP should respond to that request within 40 days. The GP is entitled to make an additional charge for his/her time in dealing with that enquiry.
- II. However, there is a duty under the 1998 Act to provide copies in an intelligible form and so no additional charge should be made by the GP where the solicitor requires better copies or transcripts of illegible material.