



HIPAA -- Patients and Their Medical Records

What is Their Right to Control Release?

The Pennsylvania Psychiatric Society office frequently receives inquiries from member psychiatrists, lawyers, and patients about the mental health patient's right to receive a copy of his or her medical records. Although circumstances and applicable laws and regulations vary, with a few exceptions psychiatrists generally must provide their patients with access to the record.

For records of care provided under the Mental Health Procedures Act, the regulations are fairly clear. This act applies to both inpatient and outpatient treatment for involuntary patients, but for voluntary patients it only applies to inpatient treatment. Pertinent regulations can be found in the Pennsylvania Code, 55 § 5100.33. This section requires the facility to give the patient "access" to the records, not physical possession of the records themselves.

"Access" is generally construed as physical examination of the record. Patients can only be denied access under very limited circumstances, including a determination "by the director that disclosure of specific information concerning treatment will constitute a substantial detriment to the patient's treatment," and when "disclosure of specific information will reveal the identity of persons or breach the trust or confidentiality of persons who have provided information upon an agreement to maintain their confidentiality." If the facility denies access under either of these provisions, this fact and the basis for the denial must be noted in the patient's record.

In addition, the Pennsylvania Judicial Code (42 Pa. C.S. § 6155[b]) states that a "patient shall have the right of access to all of his medical charts and records and to photocopy the same for his own use" (emphasis added). The pertinent section makes no exclusions for psychiatric records, referring specifically to "all of [the] medical charts and records."

Although the subchapter refers several times to records of health care facilities, making its application to outpatient records unclear, limited judicial holdings would indicate that such medical records are owned by the physician, subject to the patient's right to copy them unless the physician determines in good faith it would be harmful to the patient to receive a copy of part or all of the records. Under Department of Health regulations, medical records of hospitals are the property of the facility.

Judging from calls and letters to the PPS office, this issue is important to patients and sometimes leads to charges of illegal or unethical behavior. PPS members who are unsure about their obligation to provide a patient access to records in any particular case should seek the advice of an attorney familiar with Pennsylvania statutes, regulations, and case law on the subject.

(Much of this article first appeared several years ago in the Pennsylvania Psychiatrist, and was written in collaboration with Fred Speaker, Esq., PPS legal counsel at the time).