



FOR YOUR INFORMATION

Supreme Court Decision: Patients' Right to Access to Medical Records

In a recent decision, the Supreme Court of Canada has clarified the law with respect to the disclosure of medical records by doctors to their patients. In this case, a patient sought access to her medical records from her primary care physician. The doctor provided copies of the records, but did not produce copies of specialists' consultation notes that were also in the record. This was in compliance with the recommendations from the Canadian Medical Association.

The Court held that the relationship between physician and patient is a fiduciary relationship of trust and that all information about the patient given to the doctor by the patient, or from specialists who have seen the patient and obtained information from him or her, should be made available to the patient. This means that the patient is entitled to see, on request, the whole of his or her medical record and to receive copies of the entire record including all notes made by the doctor and all consultation reports received by the doctor. The Court's decision also states that the patient must pay a reasonable fee for the preparation and copying of that material.

The decision goes on to say that physicians can use their discretion to refuse to disclose copies of a patient chart if they honestly believe that there is a significant likelihood of a substantial adverse effect on the physical, mental or emotional health of the patient or harm to a third party caused by the release of the record. This discretion must, however, be used reasonably and for very limited purposes. For example, it is not acceptable to refuse to show the medical record to a patient to avoid unfounded lawsuits or because it would discourage the doc-

tor from keeping thorough notes. If a doctor has, on reasonable grounds, refused a patient access to his or her patient record, the patient has the right to challenge the doctor's decision in Court.

Given the Court's decision, all of the College's previous policy statements about the release of medical records to patients have been superseded by this Judgement of the Supreme Court of Canada. It is now clear that patients are entitled to have access to, and receive copies of, their entire medical record including all notes made by the attending physician and all consultation reports that are part of the attending physician's record. Physicians are entitled to charge a reasonable fee for the preparation and copying of the records. They also have the discretion to refuse to provide patients with access to their records if the doctor believes that such access would result in a substantial risk to the physical, mental, or emotional health of the patient or harm to a third party. The patient may challenge such a decision in court.

As with all reports requested by a patient, this access or these copies should be provided within a reasonable period of time after the request.

This Supreme Court ruling produces a similar rule to what will soon come into effect under the Regulated Health Professions Act. The Court's decision, however, makes this new policy effective immediately.

It is encouraging to note the Supreme Court's recognition of the importance and confidential character of the relationship between physicians and their patients. As physicians, we have always viewed our relationship with our patients as one of the utmost responsibility and trust, and we should look upon the Court's decision as a reaffirmation of the important role of the physician-patient relationship.