

Managing patient privacy and legal obligations

Dr Leon Bard, a GP in North Vancouver, recently asked for clarity regarding ICBC requests for patient records.

“Why does ICBC ask the physician to produce copies of complete medical records that often precede the motor vehicle accident when the ICBC release form states that the authorization only authorizes the release of information pertaining to the injuries sustained in the motor vehicle accident?”

Dr Bard raises an important yet often confusing issue for many physicians.

Physicians must comply with the law. We must produce information in a timely manner; however, we are also professionally obliged to protect our patient’s confidentiality and be their advocate.

Dr Bard is concerned that, “If the physician provides the complete record without adequate patient consent they are leaving themselves at considerable professional and medical legal risk.”

After reviewing the Canadian Medical Association (CMA) policy on patient confidentiality and the Insurance (Motor Vehicle) Act, I followed up with ICBC staff and consulted with colleagues at the BC Medical Association (BCMA), Canadian Medical Protective Association (CMPA), and the College of Physicians and Surgeons of British Columbia (CPSBC).

ICBC authorization

“Much of the confusion around the wording of the Authorization to Provide Medical Information (CL237A) form was the result of a previous version,” explains ICBC’s chief counsel Cathy Morton. “The form was changed in 2004 to authorize the release of records ‘relating to issues raised by [the

patient’s] claim for injuries incurred on or about [x date], including medical history and physical condition both prior and subsequent to the above date, regardless of lapsed time.”

Sometimes pre-accident injuries, or conditions that are similar in nature to the injuries sustained in the accident or affect the same parts of the body, may have an obvious relationship to the patient’s ICBC claim. The problem, however, is that it may not always be apparent how a pre-accident or post-accident condition that appears unrelated to the accident may be relevant to the patient’s claim for damages. There could be unrelated medical conditions that will delay the patient’s recovery or affect his or her ability to earn income in the future.

“If the patient says he or she cannot work, ICBC needs to know if there are other possible medical causes,” said Morton. “Or, if the patient says the accident has caused anxiety or depression, ICBC needs to know if there are other factors that might be the cause of those problems.”

Some of the ways ICBC can obtain medical information are:

1. CL237A Authorization to Release Medical Information—It is a blanket release form allowing ICBC to obtain medical information on the claimant. The ICBC adjuster is instructed to review the form with the claimant so that the claimant understands the extent of the authorization. It is standard practice for ICBC to request medical information accompanied by a signed CL237A. ICBC instructs its adjusters to explain *why* they are requesting pre-accident records, and how those records are related to the patient’s claim for injuries. This helps the doctor determine whether he or she has adequate authorization to release the records in question. As long as there is a valid

authorization, the doctor must provide the medical records without questioning relevancy to the patient’s ICBC claim.

2. CL19 Medical Report form (BCMA Fee Code A00278)—Section 28 of the Insurance (Motor Vehicle) Act provides ICBC with an all-encompassing authority to obtain medical information without the consent of the claimant. Currently, ICBC uses the CL19 Medical Report Form for this purpose. The CL19 form, which was developed jointly by the BCMA and ICBC at a negotiated fee, is generally used to document findings of injury after the initial medical exam and diagnosis.

3. Court orders—When medical records are edited or the patient revokes their authorization, ICBC may seek a court order to obtain the records in their entirety. The physician is obliged to respond to a court order request for the production of records in a timely manner. The physician should carefully review the extent of the request and provide records consistent with that order. The court determines the extent of the disclosure and relevancy of sensitive personal information to the patient’s claim.

Oath of Hippocrates

“All that may come to my knowledge in the exercise of my profession or outside of my profession or in daily commerce with men, which ought not to be spread abroad, I will keep secret and never reveal.”

Hippocrates’ principle of confidentiality remains enshrined in current ethical standards set out by physicians’ professional and regulatory bodies and in law.

CMA Code of Ethics

The 2004 CMA Code of Ethics (page 20, items 31–37) addresses the physi-

cian's ethical responsibilities for patient confidentiality. Specifically, item 35 directs physicians to "disclose your patients' personal health information to third parties only with their consent, *or as provided for by law*, such as when the maintenance of confidentiality would result in a significant risk of substantial harm to others or, in the case of incompetent patients, to the patients themselves. In such cases take all reasonable steps to inform the patients that the usual requirements for confidentiality will be breached" (italics mine).

Canadian Medical Protective Association

The CMPA advises its members to:

- Release a copy of the patient's records only when supported by appropriate consent.
- Provide records without consent when ordered by the law or an order of the court.
- Note that physicians have the ability to clarify consent with the patient when the physician feels it is appropriate to do so.

British Columbia Medical Association

The BCMA recognizes ICBC's legal right to the patient's medical information but emphasizes that an appropriate justification should be given when ICBC requests records of past medical history.

College of Physicians and Surgeons of British Columbia

The CPSBC frequently receives inquiries on this topic. The College confirms that it is the physician's professional responsibility to ensure records are well maintained and reproduced for third parties in a legible and timely manner. They caution physicians regarding the release of records in their entirety without first confirming the patient's understanding of the blanket consent for records.

It is of critical importance to review sensitive materials in the chart with the patient and to allow him or her an opportunity to reconsider the extent of consent provided.

A physician who releases sensitive information to a third party without clarifying directly with the patient could potentially face criticism from the College.

Physicians would be well advised to reference the information in the *Resource Manual for Physicians* titled "Medical Records in Private Physician's Offices" at www.cpsbc.ca/cps/p_h_y_s_i_cian_resources/publications/resource_manual.

Summary

- Physicians have a legal and professional responsibility to provide legible records to third parties in a timely manner *and* to protect patient confidentiality.
- Physicians must ensure that the request for information is supported by a signed patient consent and ensure that the patient understands the scope of the request and nature of information that will be released. This is particularly important when sensitive issues are recorded in the chart, or when the request for information goes beyond the historical date of the injury.

When in doubt, ask for advice and contact your professional associations. Follow up with the requesting third party if there are any potential delays or problems with compliance. Most importantly, communicate clearly, listen to your patients, and be certain they understand the full implication of what is being done on their behalf.

If you have any questions about ICBC's programs or policies, please contact me at martin.ray@icbc.com, by fax at (604) 943-8344, or by phone at (604) 943-6999.

—Martin Ray, MD

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