



2. I consent to the release of copies of: (Tick and complete as appropriate)

- all my medical records
- medical records falling within the scope of the Access to Health Records Act 1990
- medical records dating from ..... (Insert date)
- medical records relating to the following injury or condition:

.....  
 .....

All medical records except those relating to the following condition:

.....  
 .....

3. I understand that my medical records may be made available to my opponent in the claim which I am making, and/or to my opponent’s solicitor or experts. I also understand that my solicitor may be required to make my medical records available to the court.

4. I understand that my general practitioner has a duty to peruse my records before they are released, and that he/she may withhold any references to third parties, or information that he/she considers may be harmful for me to know.

SIGNATURE OF PATIENT .....

DATE OF SIGNATURE .....

**NOTE TO GENERAL PRACTITIONER:**

This Authority is supplied to you in accordance with the procedure approved by the South Staffordshire Local Medical Committee for use when medical records are required for the purposes of litigation. Please refer to the notes which accompany this form.

**THIS FORM CONSISTS OF 4 A4 PAGES. IT MAY BE FREELY COPIED FOR USE IN ACCORDANCE WITH THE PROCEDURE SET OUT IN THE NOTES ON PAGES 3 AND 4. IF CLEAN COPIES ARE REQUIRED PLEASE APPLY TO SOUTH STAFFORDSHIRE LMC ‘AUTUMN HOUSE’ STAFFORD ROAD, STONE, STAFFS ST15 0HG.  
 Email: [southstaffslmc@staffslmcs.freereserve.co.uk](mailto:southstaffslmc@staffslmcs.freereserve.co.uk)**

# ACCESS TO GENERAL PRACTITIONER RECORDS

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

### 1. Form of Consent

- 1.1 Patents 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.
- 1.2 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 falling within the terms of the Access to Health Records Act 1990; 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.
- 1.3 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 under the 1990 Act.

### 2. Points on Disclosure of Medical Records

- 2.1 Solicitors must appreciate that general practitioners 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. The GP is entitled to charge for his/her time in undertaking that examination.
- 2.2 The Access to Health Records Act 1990 only covers medical records dating from 1 November 1991. Medical records prior to that date do not come within the scope of that Act, and are disclosed at the GPs discretion, unless and until a court order is made.
- 2.3 Full disclosure of a patient's medical records is often requested by the patient's opponent. Solicitors acting for patients should be aware that their opponents do not have a general right of access to the patient's medical records. Generally, it is sufficient if the patient's medical records have been seen by the patient's medical expert, and that expert has identified the relevant material, and has certified that the remaining records are irrelevant. It was held by HHJ MacDuff QC in the case of *Rodgers -v- Bush* (1997 unreported) that, save in cases where substantial damages are sought, medical records should not be disclosed to an opponent without good and specific reason, in the interest of saving costs.
- 2.4 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.
- 2.5 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 paragraph 24/13 of the Supreme Court Practice).

### **3. Payment of the General Practitioner's Fee**

- 3.1 In respect of medical records obtained under the 1990 Act (ie records dating from 1 November 1991) a statutory fee (currently £10) is chargeable by the GP, except where the records have been made or added to within 40 days of receiving the request, in which case no access fee is chargeable. In addition, the GP is entitled to charge for the cost of making any copies requested, and for the cost of any postage.
- 3.2 For records sought outside the Act (ie records predating 1 November 1991), the GP is entitled to charge for work done in reviewing medical records before disclosure at the BMA recommended rate for private work (currently £55.50 to £110.50 an hour). Typically, examining the records before disclosure will take half an hour, but this will depend a great deal upon the extent of the records. In addition to the GPs time, the GP is entitled to make a charge for the copies made at the rate of 35p a sheet, or the BMA recommended rate, whichever is the higher.
- 3.3 If the overall charge by the GP is likely to exceed £75.00, then the solicitor should be informed by the GP in advance, in case the solicitor wishes to limit the extent of the documentation requested, or to seek additional funds from the client.
- 3.4 Single-sided copies are preferred, rather than duplex
- 3.5 Payment of the GPs fee should be made by the solicitor within 60 days of receipt of the copy records, unless the solicitor has agreed with the GP in advance that payment may be deferred for a longer period, for example, where the solicitor is funding the claim personally and will not be reimbursed until the conclusion of the claim. In the event that the GP requires payment before releasing the copies to the solicitor, then the solicitor should be advised of this requirement in advance, and asked to consent to that arrangement.

### **4. Timescale for Complying with a Request for Disclosure**

- 4.1 Where the request for disclosure is made under the 1990 Act, GPs should provide copies of the records within 40 days of receipt of the request. If the solicitor requires disclosure of medical records as a matter of urgency, then that should be made clear to the GP at the time of the request.

### **5. Withholding Sensitive Material**

- 5.1 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.
- 5.2 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**

- 6.1 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.
- 6.2 No additional charge should be made by the GP where the solicitor requires better copies or transcripts or illegible material.