

Access to Medical Records

Andrew Feldman, Esq.
Feldman Kieffer, LLP • 800-572-0179

We have recently seen an influx of questions regarding a patient's access to medical records. The New York Public Health Law regulates a patient's access to their own medical records, and that statute is pretty clear when a patient requests his or her own records. Pursuant to Section 18(2)(a), "upon the written request of any subject, a health care provider shall provide an opportunity, within ten days, for such subject to inspect any patient information concerning or relating to the examination or treatment of such subject in the possession of such health care provider."

What is not always as clear is how to respond to a request for patient records from someone other than the patient.

Requests made by parents or guardians of minor children, or any other legal guardians, must be treated as if made by the patient. *See* § 18(2)(c).

If the request for medical records is made by the patient's Power of Attorney, a complete copy of the Power of Attorney, with the signature page, is required. Only if the patient grants the Power of Attorney the authority to request medical records (i.e. section "(f) Grant of Authority" of the New York State standard Power of Attorney Form) can the records be released. Further, the person who has Power of Attorney will need to sign the authorization, noting that their authority to sign the authorization and request the patient's records comes from the Power of Attorney. *See* § 18(3)(a).

If the patient has passed away, the personal representative of the deceased patient's estate (i.e. Executor; Administrator; etc.) will become qualified to request medical records. If a request is made by a personal representative, the authorization must be submitted along with the Letter of Testamentary or Letter of Administration thereby signifying that this individual has the right to request medical records. Further, the person appointed as the personal representative will need to sign the authorization, noting that their authority to sign the authorization and request the patient's records comes from their appointment. *See* § 18(3)(a).

A request for records can also be made by a distributee of a deceased subject for whom a personal representative has not been appointed. If that is the case, the distributee must submit, along with the authorization, an affidavit attesting to the fact that (1) they are a distributee and (2) no personal representative has been appointment. They must also affix a certified copy of the certificate of death. *See* § 18(3)(g).

Finally, please note that a Health Care Proxy alone is insufficient to support a request for records *unless* (1) it is clear that the Health Care Proxy in effect and (2) that the request that the records are necessary to make informed decisions regarding the patient's health care. *See* Public Health Law Section 2982(3).

Of course, every situation is different. Academic Group has a legal hotline available to its insureds, for questions like these that may impact a health care provider's liability. The hotline is available 24/7 at 800-572-0179.