

You Asked About...

Request from a Lawyer for a Patient Record

Dr. Darryl Smith

Often a dentist receives a letter from a lawyer requesting a patient's health records. How to respond appropriately is a common question that is received at the office of the Alberta Dental Association and College. The dentist is often surprised when they are informed that the issue is addressed under government legislation which sets up specific requirements.

Prior to 2011, dentists relied solely on the Code of Ethics of the Alberta Dental Association and College and the Alberta Privacy and Information Protection Act to provide direction in dealing with such requests. When dentists came under the Alberta Health Information Act in 2011 the legislative requirements in this area were spelled out in detail as the government policies. There are many resources available including the Act, related regulations and publications from Alberta Health or the Office of the Information and Privacy Commissioner. This information is generic and applies to all the regulated health professionals that are under the Health Information Act.

One of the major roles of the Alberta Dental Association and College is to review legislation and provide dentists with the necessary materials to become compliant with the requirements. Dentists are custodians as defined under the Health Information Act. Part 5 of the Health Information Act outlines what conditions must be fulfilled before a dentist can disclose information to a third party. A lawyer representing a patient is a third party. An authorization from the patient must accompany the request that meets specific obligations outlined in the Act. Always remember that a patient, with few exceptions, is entitled to obtain a copy of their health information at any time regardless of issues such as a balance owing or an underlying complaint/legal issues.

If there is a dispute in terms of an access request, the patient may ask the Information and Privacy Commissioner to review the decision. A complaint can also be made to the Alberta Dental Association and College if the dentist refuses to provide a copy of the record or does not follow the access requirements of the Health Information Act. A good document to have available in your office is HEALTH INFORMATION - A PERSONAL MATTER Practical Guide to the Health Information Act from the Office of the Information and Privacy Commissioner. It is available online at www.OIPC.ab.ca and click Resources/Health Information Act and then click HEALTH INFORMATION - A PERSONAL MATTER to download. Requests for hard copies can be made through the website or by contacting The Queens' Printer.

Any release (disclosure) of health information must meet the requirements of the Health Information Act. Part 5 Section 31 of the Health Information Act states "No custodian shall

disclose health information except in accordance with this Act.” Part 5, Section 34 provides information on the release (disclosure) of identifiable health information to a third party with consent of the patient (individual).

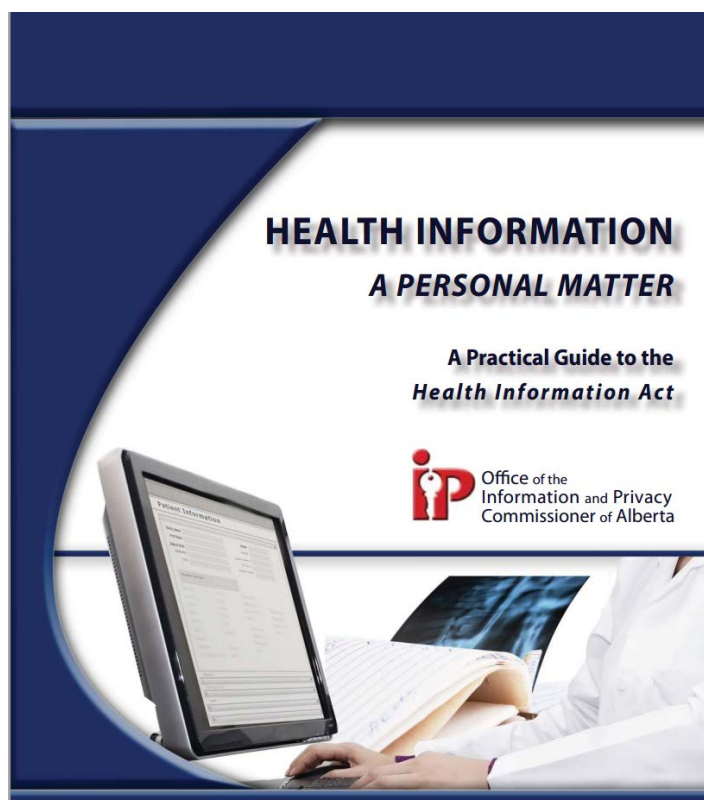
Health information Act Part 5 Section 34

- 34 (1) Subject to sections 35 to 40, a custodian may disclose individually identifying health information to a person other than the individual who is the subject of the information if the individual has consented to the disclosure.
- (2) A consent referred to in subsection (1) must be provided in writing or electronically and must include
- a) an authorization for the custodian to disclose the health information specified in the consent,
 - b) the purpose for which the health information may be disclosed,
 - c) the identity of the person to whom the health information may be disclosed,
 - d) an acknowledgement that the individual providing the consent has been made aware of the reasons why the health information is needed and the risks and benefits to the individual of consenting or refusing consent
 - e) the date the consent is effective and the date, if any, on which the consent expires, and
 - f) a statement that the consent may be revoked at any time by the individual providing it.
- (3) A disclosure of health information pursuant to this section must be carried out in accordance with the terms of the consent.
- (4) A revocation of consent must be provided in writing or electronically.
- (5) A consent or revocation of a consent that is provided in writing must be signed by the person providing it.
- (6) A consent or revocation of a consent that is provided electronically is valid only if it complies with the requirements set out in the regulations.

The Health Information Act also sets out other conditions that need to be discussed. Generally copies of the records must be provided within (30) thirty days. A rule of thumb would be “sooner the better.” A person has the right of access to any record that contains health information about that person that is in a custodian’s custody or control. The reason is secondary to the access

request. Delays can aggravate a tense situation for all parties involved. Often requests from a lawyer are related to an accident or trauma incident where the dentist's patient records are being used to substantiate the pre and post health of a patient. Even if the request is related to a complaint/legal action against the dentist, this is not grounds to withhold the records.

Fees can be charged for copies of the records. Always maintain your originals. The maximum fees that can be charged are outlined in regulation associated with the Health Information Act. Furthermore, "only the fees, as set out in the Health Information Act can be charged. Custodians must give an estimate of the total fees that will be charged before providing the services. The regulations specify what must be set out in an estimate. Custodians have the discretion to excuse an applicant from paying all or part of the fees. If an applicant asks to be excused from paying all or part of a fee and the custodian refuses, the custodian must tell the applicant that they can have that decision reviewed by the Commissioner." (excerpted Page 55, HEALTH INFORMATION – A PERSONAL MATTER, Office of the information and Privacy Commissioner of Alberta). Many dentists choose not to charge a patient for a copy of their health records.



Copies of records must maintain their original diagnostic qualities and be legible. There may be a need to include a glossary when acronyms are used. A lawyer will sometimes ask for an interpretation or clarity surrounding the patient's health record. Dentists must be cautious when discussing the record that they are just explaining the findings and not entering into a professional opinion. The fee for time spent by a health service provider is set at \$45 for each ¼ hour to a maximum of three (3) hours related to the provision of copies of patient record.

Fees for services such as photocopying and duplicating radiographs are also referenced in the Health Information Regulation. Like any health service, it is important to document the time, provider and nature of the service in the patient record. There is a requirement in the Health Information Regulation for custodians to provide an estimate prior to providing the service as noted earlier.

While the legal profession should be aware of the fees set out in the Health Information Regulation, this sometimes is not the case. The fees for producing a copy of a record is as follows which apply whether a representative (lawyer) or the patient asks for the record:

Section 10 of the Health Information Regulation: An applicant who makes a request for access to a record containing health information may be required to pay a basic fee of \$25 before the custodian performs one or more of the following steps to produce a copy of the information: receiving and clarifying the request, obtaining consent if necessary, locating and retrieving the records, preparing the record for copying including removing staples and paper clips, preparing a response letter, packaging copies for shipping or faxing or both, postage and faxing costs, photocopying a record.

Although the custodian can waive this fee, the processing of a request does not need to commence until the basic fee of \$25 has been paid. In addition to the basic fee of \$25, additional fees for producing a copy of a record may be charged in accordance with the Alberta's Health Information Act Health Information Regulation as follows:

1 The amount of the fees set out in this Schedule is the maximum amount that can be charged to applicants.

2 The following fees for producing a copy of a record may be charged if the cost of photocopying a record under section 10(l)(h) of this Regulation, calculated at \$0.25 per page, exceeds \$5, and then only the amount that exceeds \$5 may be charged:

- (a) photocopies, hard copy laser print and computer printouts \$ 0.25 per page
- (b) paper copies from microfilm or microfiche \$ 0.50 per page
- (c) floppy disks \$10 each
- (d) computer tapes \$55 each
- (e) microfiche (diaz film) \$0.50 each
- (f) 16 mm microfilm \$25 each
- (g) 35 mm microfilm \$32 each
- (h) photographs from negative
 - 4" x 5" \$10 each
 - 5" x 7" \$13 each
 - 8" x 10" \$19 each
 - 11" x 14" \$26 each
 - 18" x 20" \$32 each
- (i) 35 mm slide \$2 each
- (j) audio cassette \$5 each
- (k) video cassette:
 - 1/4", 1/2" or 8 mm - one hour \$20 each
 - 1 1/4", 1/2" or 8 mm - two hour \$25 each
 - 3/4" - 30 minutes \$18 each
 - 3/4" - one hour \$23 each

- (l) radiology film \$5 each
- (m) other media not listed above actual costs
- (n) supervision of applicant's examination of original records \$6.75 per 1/4 hour
- (o) severing time to determine whether a record requires , and to review and to identify the parts of the record to be severed:
 - (i) technician time \$6.75 per 1/4 hour to maximum of 3 hours
 - (ii) Health services provider time \$45 per 1/4 hour to maximum of 3 hours
- (p) producing a record from an electronic record:
 - (i) computer processing actual costs
 - (ii) computer report generation \$10 per 1/4 hour
- (q) other direct costs:
 - (i) charges to retrieve records or to return records, or both, from another location contracted fee or average past costs
 - (ii) courier charges or delivery charges, or both, to send copies to applicant other than by mail or fax actual cost