

OTLA Submission to College of Physicians and Surgeons of Ontario

Medical Records Policy

November 14, 2017

The Ontario Trial Lawyers Association (OTLA) welcomes the opportunity to participate in the College of Physicians and Surgeons of Ontario (CPSO) preliminary review of the Medical Records Policy Statement #4-12 (the “Policy Statement”).

OTLA was formed in 1991 by lawyers acting for plaintiffs. Our purpose is to promote access to justice for all Ontarians, preserve and improve the civil justice system, and advocate for the rights of those who have suffered injury and losses as the result of wrongdoing by others, while at the same time advocating aggressively for safety initiatives.

Our mandate is to fearlessly champion, through the pursuit of the highest standards of advocacy, the cause of those who have suffered injury or injustice. Our commitment to the advancement of the civil justice system is unwavering.

Our organization has more than 1,500 members who are dedicated to the representation of wrongly injured plaintiffs across the province and country. OTLA is comprised of lawyers, law clerks, articling students and law students. OTLA frequently comments on legislative matters, and has appeared on numerous occasions as an intervener before the Court of Appeal for Ontario and the Supreme Court of Canada.

Background

Accurate, detailed and complete medical records are essential to the provision of quality health care by physicians. OTLA commends the CPSO for recognizing the key role medical records play in facilitating collaborative and coordinated team based care for patients, ensuring comprehensive, high quality of care, continuity of care, assessment of care and evidence of care, as set out in the current CPSO Policy Statement on Medical Records (Policy #4-12).

OTLA is concerned, however, that the Policy Statement fails to provide guidelines with respect to the requirements for access or transfer of medical records to third parties, including but not limited to a patient’s counsel. Additionally, OTLA recommends that any amendments to the Policy Statement ensure that barriers to access one’s own personal health information are eliminated, and in particular, provide substantive guidelines with respect to minimizing the cost barrier.

Consent for Third Party Access

The CPSO Policy Statement provides some guidance to physicians with respect to the disclosure of medical records when required by law or when circumstances provide for the assumption of implied consent of the patient to collect, use, or disclose the patient’s file. OTLA suggests that any revisions consider the form of consent that may be required to transfer or provide access to medical records to third parties on behalf of the patient

where such circumstances do not apply. To this end, OTLA suggests that the guidelines expressly provide for the necessity to obtain written consent from the patient that notes: (1) the name of the patient, (2) the name(s) of the third party to receive the disclosure, (3) confirms the nature of the records to be transferred or accessed, and (4) is duly executed by the patient.

Cost of Access

OTLA again commends the CPSO Policy Statement for affirming the patient's right of access to one's own records of personal health information, which ensures continuity of care, and is vital for the protection of an individual's right to determine what shall or shall not be done with his or her own body, as well as ensuring a patient's ability to access to other legal and common law rights. OTLA further commends the CPSO Policy Statement for confirming the patient's right to request that corrections be made to their record if he or she can show that it is incomplete or inaccurate. As outlined in IPC Order HO-009, "it is often crucial for the patient to know what is being recorded, and to correct inaccuracies that may affect education, career advancement or government benefits". However, OTLA is concerned that the Policy Statement fails to provide sufficient guidelines so as to ensure that the costs of access do not impose a barrier or impediment on the right of the individual to access his or her records of personal health information.

OTLA recommends that the policy provide for substantive guidelines with respect to ensuring that any fees associated with such access be truly reasonable in the circumstances, expressly noting that the reasonable fees charged ought to consider the importance of the right to access.

Additionally, OTLA encourages the CPSO to expressly provide substantive guidelines with respect to the reasonable fees to be charged for access or transfer of medical records be applied to a patient's request to access or transfer of medical records by way of a third party, including the patient's legal representative. OTLA notes that it is the right of the patient to have their own health information, and that the reason for the request is not important in assessing the amount of the fee that may be charged in making the personal health information available or providing a copy of the record as noted in IPC Order HO-009.

Conclusion

As always, OTLA appreciates the opportunity to be involved in this process and if you have any questions or require clarification, please do not hesitate to contact us.