



## **FACTSHEET: REQUEST FOR RECORDS**

### **What is a request for records?**

A Request for Records is a formal request for copies of documents in your possession.

There are situations when you may receive a request for access to the medical records of one of your patients. Regrettably, some medical practitioners are under the misapprehension that the medical records of the patient belong to them and that such requests for access to the medical records are treated with disdain. In some instances, practitioners have requested the requester of the records to reimburse them for their time and effort spent in producing records.

The reality is that our law entitles every patient to their own medical records. Section 32 of the Constitution grants everyone the right of access to information held by the state or another person, which is required for the exercise or protection of any rights. To give effect to the constitutional right of access to any information held by another, Parliament enacted the Promotion of Access to Information Act 2 of 2000 (PAIA). In terms of section 25(1) of PAIA, read together with section 15(1) of the National health act, a healthcare provider is obliged to disclose personal information to a request where such access or disclosure is in the interests of the requester. Therefore, every request for records from a patient should be dealt with on the basis that the patient is exercising his or her constitutional entitlement to their own medical records. Failure to appropriately comply with such a request to produce records could lead to a court application demanding the production of that patient's records as well as an adverse cost order against the medical practitioner for failing to comply with the request.

Requests for records may come from the patient themselves, from another person or organisation, or via a court order such as a subpoena, summons or other court notice. The reasons why patients may require access to their own personal information are varied. In some cases, it may be necessary for the patient to access such records for purposes of obtaining a second medical opinion, which they are entitled to do. Medical records form an essential part of any personal injury claim since it provides objective evidence and information pertaining to the particular medical event at the time of the incident, and the medical judgement exercised at that time. Often requests for access to medical records are made by patients who are contemplating litigation for a personal injury claim. Sometimes those personal injury claims could be against the Road Accident Fund, a Shopping Centre, Municipality, et cetera, and the records are required to provide particularity with regard to the patient's health condition before and after the alleged injury. In other cases, those personal injury claims are against clinicians for alleged clinical negligence. Health records



### **What to do first?**

1. Check who the request is from, either the patient or representative of the patient;
2. If the request is from a representative of the patient, ensure there is a copy of the patient's ID and a consent form signed by the patient;
3. Confirm that you treated the patient;
4. Check which documents they have requested and for what reason;
5. Confirm that you have the records which have been requested;
6. Contact your professional indemnity provider as soon as possible, whether it be your professional indemnity insurer.

The medical practitioner who receives a compliant PAIA request has 30 days within which to make the information available to the requester. Your professional indemnity provider has the expertise to assess whether a request for records has been made in compliance with PAIA, identifying which records are obliged to be produced and under what circumstances the records can be made available.

### **What is the next step?**

Typically, your professional indemnity provider will require you to provide your professional indemnity provider with the actual request from the requester, as well as a full copy of your medical records in respect of the applicable patient. In some instances, it may be useful to provide a brief report of the patient's clinical history and the treatment you provided. Often this report will give your professional indemnity provider an indication as to whether there could have been an adverse outcome or complication which may provide clarity with regard to any potential personal injury claim against yourself.

It is important to also educate your administrative staff with regard to requests for records.

The healthcare provider is required to send all records unaltered to the requester. If it is found at a later stage that not all records were sent, the healthcare provider must inform the requester as soon as reasonably possible.

In order to obtain copies of their health records, the patient (or his or her authorised representative) must provide the following:



- a) a correctly completed and signed PAIA form C;
- b) a duly signed consent form authorising the production of the patient's records;
- c) a copy of the patient's identity document;
- d) a power of attorney in favour of the authorised representative, if applicable.

When requesting the health records of a minor child, the above list of documents must also include the birth certificate of the child as well as a letter by the parent, legal guardian or curator, confirming that they are acting on behalf of the minor child.