

## Virginia Board of Medicine

### Guidance on Questions about Medical Records

#### **Who owns the medical record - the practitioner or the patient?**

Virginia Code § [32.1-127.1:03](#) declares that medical records are the "property of the provider maintaining them". The law recognizes "a patient's right of privacy in the content of a patient's medical record" and makes the practitioner responsible for ensuring that the patient's records are only released in accordance with law.

The definition of "record" is expansive and includes all written, printed or electronically recorded material, maintained by a provider in connection with a patient, as well as the substance of any communication between the patient and provider during the course of providing services. It also includes other information acquired by the provider about the patient in connection with the provision of health care services to the patient, including records obtained from or created by another health care provider.

Note: The law does not apply to health care records created in connection with the Workers Compensation Act or to records of minors, except as issues concerning minors' records are specifically addressed in the statute. Virginia Code § [54.1-2969](#) addresses when a minor is deemed to be an adult for the purpose of accessing or authorizing the disclosure of medical records related to certain medical or health services.

#### **How do I get a copy of my medical record?**

A request for copies of medical records must be in writing, dated and signed by the person making the request, and include a reasonable description of the records sought. If someone is making a request on your behalf, he or she must provide evidence of the authority to receive the records (such as a power of attorney). The provider must accept a photocopy, facsimile, or other copy of the original signed by the requester as if it were an original (Virginia Code § [32.1-127.1:03](#)).

*Within 30 days of receipt of a request for copies of or electronic access to health records, the health care entity shall do one of the following:*

- (1) furnish such copies of or allow electronic access to the requested health records to any requester authorized to receive them in electronic format if so requested;*
- (2) inform the requester if the information does not exist or cannot be found;*
- (3) if the health care entity does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the health care entity who maintains the record; or*
- (4) deny the request (A) under subsection F, (B) on the grounds that the requester has not established his authority to receive such health records or proof of his identity, or (C) as otherwise provided by law.*

§ [32.1-127.1:03](#) also provides that the patient's physician, clinical psychologist, or clinical social worker may make a notation in a patient's record that furnishing of the records will be "*would be reasonably likely to endanger the life or physical safety of the individual or another person, or that such health record makes reference to a person other than a health care provider and the access requested would be reasonably likely to cause substantial harm to such referenced person.*" If a patient's request for his record is denied for this reason, the provider must permit the record to be copied and reviewed by a provider, selected by the patient, of similar background to the individual who made the notation in the chart, and that practitioner may make a judgment as to whether the records should be made available to the patient.

### **What will I be charged for a copy of my medical record?**

If an individual requests a copy of his health record from a health care entity, the health care entity may impose a *reasonable cost-based fee, which shall include only the cost of supplies for and labor of copying the requested information, postage when the individual requests that such information be mailed, and preparation of an explanation or summary of such information as agreed to by the individual.* For the purposes of this section, "individual" includes a person with authority to act on behalf of the individual who is the subject of the health record in making decisions related to his health care.

If an attorney or insurer requests a copy in conjunction with civil litigation, the charges are set in § [8.01-413](#) of the *Code of Virginia*.

### **How long does a provider have to keep a medical record?**

Regulations of the Board ([18VAC85-20-26](#)) state that practitioners must maintain a patient record for *a minimum of six years* following the last patient encounter with the following exceptions:

1. Records of a minor child, including immunizations, must be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;
2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or
3. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

After October 19, 2005, practitioners must post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records can only be destroyed in a manner that protects patient confidentiality, such as by incineration or shredding.