

# Before Litigation Obtaining Necessary Medical Records

by Gerryanne Cauler, RN, Attorney at Law

How do you begin a medical record review when you first obtain a client, receive a complaint, or find four file boxes of records on your office floor? In order to fully investigate an illness or injury of a client/plaintiff/claimant you must obtain all of the relevant medical records.

You will need more than the handwritten notes of physicians or x-ray reports, and the task of obtaining all the necessary records to fully evaluate the past and current medical state of an individual may seem overwhelming. It can leave the evaluator/paralegal swimming in piles of undecipherable paper.

The goal is to obtain all the relevant medical knowledge without extraneous information and paper that clouds the issues and clutters your office. It can be tricky discerning the extraneous and deciding which records are not necessary.

Sometimes the trick is getting enough medical record information to fully understand the nature of the problem. Medical records include not only records from hospitals, physicians and dentists, but also from long-term care facilities, inpatient rehabilitation facilities, out-patient facilities, emergency rooms, chiropractors and ophthalmologists, to name a few. Medical records, in addition to treatment notes, include x-rays, pathology slides, tissue specimens, neurological testing, and functional assessments. When requesting medical records from a facility or provider, broaden

requests to include any or all of these.

Also request notes kept by separate departments such as social work, discharge planning, utilization review, physical therapy, or any department even suspected of having contact with the client/complainant. This rule of thumb is also true of requesting records from doctor's offices.

Some physician's offices have separate teaching facilities or other services that are provided in their offices, but would not be included in a records request unless specifically named. It is not uncommon for a physician's office to offer massage therapy, physical therapy, health teaching by nurses, diet teaching, or diabetic care.

## Look for Consistency

The first step in determining what medical records are needed begins with an examination of the information presented by the client or the complaint. Evaluate the claim of injury against business records that may be available to you (e.g., verification of hospitals, physician offices, etc.). Check these documents for consistency with the facts provided by the client or complaint. If they do not corroborate the facts, you gain an idea of areas that need further investigation.

If at all possible, after you have received the information or complaint and had time to assess the information for consistency or accuracy, recheck the facts with the client or with the medical records of the defendant. Find out what physician, treatments, and medications the

*continued on page 34*

client/plaintiff had prior to the claimed injury. Focus on information related to prior pain treatment or injuries.

Determining exactly which medical records you should obtain and from what health care providers can be an off-putting assignment. It is understood that you must obtain records of all treatment the client/plaintiff received regarding the claimed injury or illness. But is it necessary to request records from every physician or health care provider that ever treated or evaluated your claimant? Not necessarily. This is a determination that you will have to make on a case-by-case basis.

The best place to start is the records of the family physician or internal medicine provider. Typically, it is the role of the family physician or the internal medicine provider to coordinate all care received by an individual. In this role, the family physician or primary care provider will receive copies of all laboratory and diagnostic tests, even if other physicians order them.

Specialty physicians typically send a letter to the primary physician, summarizing the care provided. It is important to compare the type of treatment the individual is receiving from each physician. Look for inconsistencies in the treatment plans of physicians.

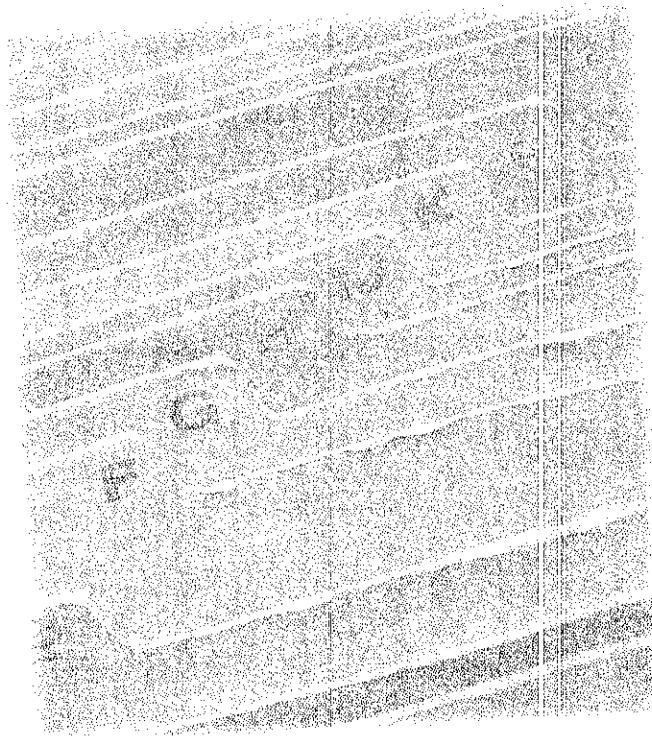
Records from family physicians typically have a face sheet. This summary sheet should include all the diagnoses the individual has had during the individual's relationship with the physician. This list will include the original onset dates of the diagnosis, and typically includes all medications ordered for the individual as well as a medical history.

By closely evaluating the records of the family physician, it will become apparent as to what records must be obtained and analyzed. Requesting and

obtaining more records than necessary will only cloud the issues and confuse the evaluator. On the other hand, what if you believe that you have not received all the necessary information?

### Be Complete, Be Picky

When sending a request for records to a physician's office, hospital or other facility/provider, be very complete in your requests. It is not uncommon for documents relating to the care of an individual to be kept in departments other than in medical records, and a general request for medical records will not get them released to you.



Include in your request copies of all documentation related to the claimant, including (but not limited to) social work notes, patient advocacy notes, incident reports, and communication from the claimant, the claimant's family or claimant's attorney.

If you suspect that a claimant has been treated previously for an injury, but all medical records show a negative history of treatment, what can you do? Look to local clinics and emergency rooms in the direct

vicinity of the claimant's home, but also look to clinics and emergency rooms in neighboring towns.

Is it necessary to obtain all past medical records for every complaint? Absolutely not. Let the records of family physician guide you. If a female's complaint involves a head injury there is probably no reason to obtain her gynecological records.

For the same reason, it is typically not necessary to obtain school records or the pediatric records of adults. After you have evaluated the records of the family physician and you believe that you have obtained all necessary records, seek an expert opinion before attempting to obtain further records.

By following a few steps, you can obtain all the medical records necessary to fully investigate a personal injury claim. From the records of the family physician, determine if it is necessary to obtain the records of all previous treating physicians and facilities. Be sure to include in your records request documentation from all hospital departments or physician office services. Finally, if you believe that more treatment has been procured than has been documented, include in your search nearby clinics or emergency rooms.

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