

Free yourself: 8 steps to easier Records Retrieval

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// He who has no taste of order, will often be wrong in his judgment, and seldom considerate or conscientious in his actions. //

[Johann Kaspar Lavater](#)

EVERY PERSONAL INJURY CASE you litigate as plaintiff or defense counsel, individual or class, requires that you obtain court ready medical documentation. No matter your legal expertise, the valuation of the case will be based largely on the information contained within these records. Thus, the completeness, authenticity, legibility, and organization of the medical records you present is critical.

Unfortunately, collecting these records can be a time-consuming and frustrating task. You will often feel as though your hands are tied, especially in relation to the amount of time it takes for a provider to return your records and in relation to what records you actually receive. The following commonly asked questions, answers and tips will free you from these problems and make your collection of medical records much easier. ▶

Who has the records I want and where are they physically located?

It doesn't matter if the records are two blocks down the street or in another state or country, the step-by-step procedure will be similar but the effort necessary to meet each step will be unique. The state statutes, individual medical provider requirements and the sub-contracted copying agents will be different in each case.

For your request to be handled as efficiently as possible, in some cases, a myriad of telephone calls will be necessary to ensure that your request even ends up in the right hands. Although it may appear time consuming, your best bet is to measure twice and cut once.

Finding the physical location and custodian of your records is not always just one phone call away. Physicians often work for clinics, clinics are a part of groups and groups are a part of a health insurance organization. This chain is pretty easy to follow but HMOs buy out other HMOs all the time. Thus, the physician may be the same but all the clinics and group names have changed. The situation is further complicated because listings for on-staff physicians in the telephone book are uncommon or the claimant only has a vague recollection of who treated them and where they were.

Locating chiropractic offices, massage centers, psychiatric offices, pharmacies, employers, etc. can be a whole different situation. They may be defunct, or sold or the healthcare provider may have died since the claimant's last treatment. If you deem these records important to your case, be ready to work the bureaucracy of the state where this individual practiced to recreate history and then apply the knowledge gained to current day. This basically becomes a skip trace for a medical provider.

Once you find the provider, they are not always necessarily the custodian of the records.

■ **TIPS: Call, research, ask questions, investigate and call again before relying on an address of a physician or facility provided to you by your client or opposing counsel.**

Can I limit my request to certain records to save time and money?

Can you? Yes. Should you? No. Any good insurance defense attorney will tell you they win cases by finding that one record that reveals a pre-existing injury plaintiff's counsel did not know about because the client did not tell him/ her and they didn't request all the records.

A few bucks can always be saved if specific portions of the record or specific dates are omitted by way of what you request. The inherent problem is obvious. If I restrict what I want, will I take a chance on not receiving what I really need? One missing page of records from one doctor's office can literally make or break your case. The potential losses relating to this question highlight the reality that **Information is Power**. Short term gains often lead to long term losses. Cost relating to anything is a double-edged sword. In many cases, just gathering pertinent information is insufficient. It is up to you to decide if the case's value warrants the potential risk of loss due to missing information.

■ **TIPS: Request everything and leave nothing to chance.**

How long do I have to wait to receive the records?

Court deadlines, IMEs, arbitrations and your needs have little affect on when your records will arrive. In reality, the timely receipt of your records is often

left to an administrative assistant who spends his/her day in a basement being harassed by others who need their records copied.

Expect 31 to 45 days average from the time you send your request to the day the records arrive in your office. This timeframe only applies if the request is sent to the right place, the location does not lose the request, they are able to locate a chart, the authorization is sufficient and a pre-pay is not required.

PLEASE NOTE: If any of the aforementioned problems occur, you will need to turn the clock back to day one and resubmit your request.

■ **TIP: As soon as you accept (or agree to investigate) a case, begin your investigation into the collection of medical records. Waiting to see if the case is going to settle, or waiting until litigation commences is not recommended.**

Calendar follow-up calls or letters on all medical requests. Do not just sit back and wait for the records to arrive. Do your own status checks and prodding if necessary to push the process along.

What if I don't receive what I asked for?

Medical charts are often incomplete at large clinics, hospitals and medical centers especially when it concerns recent treatments. Because so many separate departments are involved, (each supplying information to the general file) the passing, sorting and final filing can take weeks if not months. Discharge Summaries, Operative Reports, History and Physicals and Consultations are a whole separate issue because all of these documents require a physician's signature after dictation/transcription ▶



has been completed. In some cases, over a year transpires after discharge before a physician signs a Discharge Summary.

If you happen to be requesting medical records for an individual who died at that hospital or an affiliated clinic, patience will be your biggest virtue. More times than not, a "Death Chart" will be sent directly to the Risk Management Department and will not be available to the medical records staff. Amazingly, the information contained in the file prior to it being sent to Risk Management is not always consistent with the information in that file after it has been returned to permanent storage.

■ **TIP: Thoroughly review the records, index them, review them with your client, and then review them again.**

What if I requested certified records and received uncertified copies?

As a preliminary matter, a certification should always be sought when obtaining medical records. Even though it is no guarantee, the certification gives you (and the court and opposing counsel) some verification that you have received what you have requested and that you have received the contents of the file. Despite clear and precise requests for certified copies of medical records, the records can often be returned uncertified. The knee jerk reaction is to call the custodian and ask him/her to send a certification for the uncertified copies. Not many custodians will do this and for good reason: they handle many requests and they do not remember who copied the file, what was copied from the file, or whether something was missing from the chart or left out when it was copied. For these reasons, attorneys should be reluctant to rely on a certification from a custodian sent after the records were already produced.

■ **TIP: Generally, and for your protection as well, the only way a custodian will certify the records is to recopy the file and certify this second set of copies. The other option is to send back the first set of uncertified copies received for certification. However, the risk involved with doing this is that many custodians will not do the page-by-page review against the original record. If this method of obtaining a certification is used, make a copy of the records prior to resubmitting them to the custodian.**

Will the custodian accept my authorization?

A signed medical release authorization should be an undeniable document ensuring the release of the signor's medical records. Unfortunately, it is not. Each state has statutes that outline all the requirements of a valid authorization within that state. Moreover, the new HIPAA laws supercede state statutes. Sometimes, despite a statute, each medical provider has the ability to be more restrictive in its release of information. The provider's belief of potential liability is most often the reason for this. In addition, the custodian may require an original authorization (even if the statute says a copy is valid) dated within the last three (3) months (even though statute allows one year).

Keep in mind that many custodians feel they are performing a duty for the patient when they return an authorization. With this in mind, a new authorization should be obtained rather than resubmitting the returned authorization with changes. A change made to an authorization can be viewed as an illegal alteration by the custodian that warrants notification of the patient at which point civil litigation may be pursued.

■ **TIP: Make sure that each authorization for the release of**

medical records complies with all applicable state statutes and all HIPAA requirements.

Will I need the records subpoenaed?

The process of serving a subpoena for document production (Duces Tecum) varies by state, the court from which the subpoena will be issued, and the rules within the jurisdiction in which it will be served. California, for example, has a very clear outline within its evidence code for use of a subpoena for production but most states do not outline the procedures for medical document production quite that thoroughly. Federal subpoenas can successfully cross jurisdictional lines but state court subpoenas generally are not honored by parties served outside that jurisdiction, unless appropriate court orders are obtained from the jurisdiction in which the party to be served resides.

■ **TIP: Refer to the rules within the state in which service will be attempted.**

Will my staff have the time to collect these medical records?

This is a fairly easy question to answer. Probably not. If they say they have the time to conduct a thorough collection of every medical record needed in every case, you are most likely losing precious time and money on this aspect of your cases. The retrieval of records is a time-consuming, tedious and ever-changing process. The end result is a loss of firm money, staff time/wages, billable hours, and loss of cases and the practice of law.

■ **TIP: Consider outsourcing this task so your time and your paralegal's time is freed up for the more important functions of case preparation with a view towards settlement or verdict. ■**