

**RE: PRODUCTION OF DOCUMENTATION IN THE
POSSESSION OF A THIRD PARTY IN LITIGATION**

This will explain what you are obligated to do if you receive a request from a lawyer to supply documentation you are in possession of to their office. This may relate to your current or former patient, client or employee.

The lawyer for a litigant, in relation to a legal claim he/she is making, may have occasion to request documents or records (including electronic records) from a person or company who is not a party to the lawsuit. During a lawsuit like a personal injury claim, usually before or at Questioning (Examinations for Discovery), a litigant can require the lawyers opposite to request a non-party to provide them with a complete copy of your employee/patient/client's chart or file held at your office, including copies of all documentation that you may have thereon. We want this information because the document or record is potentially relevant and material to the issues raised in the lawsuit, such as the current and/or prior medical and personal condition of an injury victim, as it may be relevant to quantify his/her claim.

The Courts have ruled that the party must consent to releasing such information, and the Court can and will compel the party who has the documents to release them.

Accordingly, if you are asked to provide a copy of documentation you have, and the release of the information has been consented to by all persons who may be affected (a duly executed authorization must be provided), you are obligated to produce the record or document.

Please note that there are deadlines and time limits provided for in the Rules of Court, and a timely response is necessary. Usually you should respond within two weeks of the date of the accompanying letter. Note that a failure to respond may result in an application by the lawyers under Rule 5.13 of the Alberta Rules of Court for a Court Order requiring you to produce the chart, notes and/or documents. Rule 5.13 reads as follows:

Obtaining records from others

- 5.13 (1) On application, and after notice of the application is served on the person affected by it, the Court may order a person who is not a party to produce a record at a specified date, time and place if
- (A) the record is under the control of that person,
 - (B) there is reason to believe that the record is relevant and material, and
 - (C) the person who has control of the record might be required to produce it at trial.
- (2) The person requesting the record must pay the person producing the record an amount determined by the Court.

What can you charge the lawyer for producing the documents/records: usually any reasonable fee plus copying charges will not be objected to. Lawyers understand there is a cost involved with this request, including locating the information, copying it and mailing it. Unreasonable charges may be deemed to be refusals.

Should you have any questions about this, please do not hesitate to call Mark E. Feehan at (780) 424-6425 at your convenience.