

IMPORTANT MEDICO-LEGAL ASPECTS IN MEDICAL RECORD KEEPING

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Session Summary

- i. Relevant legal requirements for medical records
- ii. The more practical reasons for making and keeping medical records
- iii. The pit-falls and consequences of poor medical records



Legal Requirements

- i. Medical Practice Regulation 2008 (NSW)
- ii. Health Insurance (Professional Services Review) Regulation 1999 (Cth)
- iii. State Codes of Conduct and Guidelines



Medical Practice Regulation 1999 (NSW)

- i. Clause 4 – Medical practitioners and medical corporations must make and keep a record for each patient (or ensure one is made and kept)

Medical Practice Regulation 1999 (NSW)

- i. Schedule 1 – what is required to be included?
 - i. Sufficient information to identify the patient
 - ii. Information relevant to a diagnosis
 - iii. Details of medications prescribed
 - iv. Details of information provided to the patient
 - v. If treatment provided, the date and the nature of the treatment, the name of th

Medical Practice Regulation 2008 (NSW)

- i. Clause 5 – records to be made contemporaneously

- iii. Clause 6 – records to be kept for 7 years after last consultation or, for 7 years after a patient turned (or would have turned) 18

- v. Clause 7 – disposal of records

Health Insurance (Professional Services Review) Regulation 1999

- i. One of the purposes of this Regulation is to set out what is required of medical records so that a practitioner may in due course seek to justify a claim for Medicare Benefits if required to do so

Code of Conduct

- i. Unlike New South Wales, Queensland, Victoria, Western Australia, South Australia and the Australia Capital Territory do not have Regulations governing medical records
- ii. Instead, the requirements to make and keep clear, accurate and contemporaneous medical records are found in Codes of Conduct issued by the various State Medical Boards



Practical reasons for keeping records

- i. Records are imperative in the proper defence of a civil claim made against a practitioner – especially in circumstances where there is a contest as to what the patient actually thought he or she was having done and, what they consented to on the basis of the information given to them by the practitioner

Practical reasons for keeping records

- i. Records are also imperative in the defence of a complaint made by a patient in disciplinary proceedings

- iii. In NSW a breach of a Regulation is deemed by the Medical Practice Act 1992 (NSW) to amount to Unsatisfactory Professional Conduct

Practical reasons for keeping records

- i. NSW Medical Board Newsletter July 2009
- iii. 'The Medical Board, defence unions and others seem to write articles ad nauseum about the importance of medical records'
- iv. 'These situations highlight the difficulties and complications caused by poor records in the management of complaints against doctors, but such instances also raise broader concerns about inadequate record-keeping in the context of th



Consequences

- i. Increasing number of complaints about medical practitioners following the Law reform of the early 2000's in NSW
- ii. If it is not written down, it didn't happen
- iii. No notes = no defence

Consequences

- i. Lindsay v Health Care Complaints Commission (2005) NSW CA 356
- ii. Dr Lindsay was a general practitioner practising in the field of skin cancer medicine in Sydney
- iii. He had a number of conditions imposed upon his Registration following an appearance before a Professional Standards Committee
- iv. A number of those conditions related to his record keeping
- v. One specifically involved ongoing Audits of his records by a Board approved practitioner



Consequences

- i. In relation to the medical records issue, the Tribunal said:

‘In relation to the failure to maintain adequate and legible medical records the same “blinkered” approach on the part of Dr Lindsay is evident.’

Consequences

i. The Tribunal then said:

‘It is apparent that Dr Lindsay has learnt little from the two

audits which have been conducted to date. He apparently fails

to understand the overarching requirement of the Regulation

that he keep records, in a legible fashion, of the patient’s history,

examination findings, treatment and further proposed management so as to allow another medical practitioner to



Conclusion

- i. In conclusion, detailed and contemporaneous medical records are imperative.

- iii. They help to ensure ongoing quality patient care and, they make it easier to defend a civil claim or a disciplinary complaint

