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MEDICAL RECORDS OWNERSHIP AND TRANSFER

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OWNERSHIP OF MEDICAL RECORDS

In general terms, patient medical records “remain the property of the professional”. However, while the practitioner owns and controls health information, practitioners must only use and disclose patient information pursuant to the terms of the *Health Records Act 2001* (Vic) (“the *Health Records Act*”) or the *Privacy Act 1988* (Cth) (the “*Privacy Act*”).

On the death of a practitioner, the ownership of the medical records passes to the next of kin or executor of the deceased’s estate.

TRANSFER OF MEDICAL RECORDS

There are several situations where a patient’s medical records may be transferred:

- When a practice has been sold / merged, or is about to be closed down;
- When a medical practitioner retires or has passed away; and
- Where a patient is about to receive care from another health service provider, or when a patient passes away

SALE OR CLOSURE OF A PRACTICE / RETIREMENT OR DEATH OF A MEDICAL PRACTITIONER

Health Privacy Principle 10 of the *Health Records Act* states that when a practice is to be sold, transferred or closed down, the medical practitioner (or legal representative in the case of a deceased medical practitioner) must publish a notice in a newspaper in the locality of the practice.

The notice should include:

- Details of the practice (eg., the name and address of the practice, and the names of medical practitioners)
- Reasons for the notice (eg., stating that the practice is about to be sold or closed down, or that a medical practitioner is about to retire or has passed away);
- The manner in which the medical records held by the practice are to be dealt with (eg., that the records will be transferred to a secure storage facility or will be

- retained in the practice);
- Details of how a patient may be given access to their medical records during this period; and
- Any other guidelines (if applicable) issued by the Health Complaints Commissioner (please see below).

Following the notice being given, the practice will need to wait 21 days or more before electing how to deal with the information

During this time medical records should be securely held at all times.

TRANSFER OF MEDICAL RECORDS TO ANOTHER HEALTH SERVICE PROVIDER

An individual may request for copies of their medical records to be transferred to another health provider. This request can be made by the individual or the other health service provider on the individual's behalf.

The health information must be provided to the other health service provider as soon as practicable after payment of the specified fee not exceeding the maximum fee prescribed by the *Health Records Regulations 2023* (Vic) (The Regulations)

Please see the AMA Victoria Fact Sheet on Access to Medical Records for further information.

MEDICAL RECORDS OF DECEASED PATIENTS

The *Health Records Act 2001* (Vic) applies in relation to a deceased individual who has been dead for 30 years or less in the same way as it applies in relation to an individual who is not deceased. As such, you cannot disclose information about your deceased patients to third parties (such as family members, partners or solicitors) without requisite authority.

The rights and powers conferred on individuals under the *Health Records Act* are exercisable by the legal representative of the deceased individual. Please note that this refers specifically to the executors of the deceased's estate, and not necessarily the 'next of kin'.

You may also disclose health information to the extent reasonably necessary to either verify the identify the deceased patient, or ascertain the identity and location of an immediate family member (or other relative) for the purpose of facilitating a police or coronial investigation; or assisting in the identification of the deceased individual.

A registered medical practitioner may also be required under the *Coroners Act 2008* (Vic) to assist in the investigation of a deceased patients death, or produce medical records in connection with that patient.