



## RIGHT OF ACCESS TO MEDICAL RECORDS

Information contained in medical records is increasingly required for a variety of purposes by health insurance companies, employers, schools, credit agencies and, of course, for litigation. In each of these circumstances, a patient has a vital interest in being able to view what is recorded in his medical records as the records can affect education, career advancement and entitlement to insurance and other benefits. Does a patient have a right of access to his or her medical records?

There is no legislation in Jamaica regulating the issue of a patient's access to his or her medical records and it is therefore governed by the common law. However, there does not appear to be any local case law and regard must be had to the law in other jurisdictions. It is generally accepted that the health care provider who compiled the medical records is the owner of those records. Nevertheless, it has been held that a patient has a right of access to the information contained in his or her records. A health care provider is therefore not entitled to exercise his or her ownership rights to deny, without reason, access to an enquiring patient. This right of access arises from the very nature of the doctor/patient relationship, which is one of the relationships legally recognized as involving trust and confidence. The information conveyed to the doctor by the patient in the course of the relationship is treated as being held by the doctor on a sort of trust. This confers on the patient a beneficial interest in the information contained in the medical records and mandates the health care provider to permit patients access to the records.

Since the patient's right is limited to one of access only and not outright ownership of the medical records, it is important to note that the patient is never entitled to the tangible records themselves. As owner, every health care provider is entitled to the physical custody of the original record. The business of that provider could hardly survive the removal of records from its premises. Consequently, patients are only entitled, upon request, to examine records and where appropriate, to make copies upon payment of any reasonable photo copying charges imposed.

The health care provider, in appropriate circumstances, can refuse to permit access. However, this decision cannot be made arbitrarily. Refusal to allow access can only be warranted where it can be shown that there is a real potential for harm to the patient or a third party. A decision to refuse access can always be challenged in the court and where appropriate, a court order will be made for the release of the records notwithstanding the health care provider's refusal. In the United Kingdom, the right of access to medical records is governed by the Access to Health Records Act. Perhaps it is time for Parliament to pass similar legislation in Jamaica.

By Christopher Kelman.

Christopher Kelman is a Partner at Myers Fletcher & Gordon and a member of the Firm's Litigation Department. Chris may be contacted at [christopher.kelman@mfg.com.jm](mailto:christopher.kelman@mfg.com.jm) or through [www.myersfletcher.com](http://www.myersfletcher.com).