

What's the Deal with Medical Records & Confidentiality?

Medical Records are an important and tricky area when it comes to privacy legislation. When an illness, injury or incident occurs at a venue, workplace, event, or other public location, there are many individuals or entities who have an interest in gathering information regarding the situation. Ultimately, medical and health *information* belongs to the patient themselves, while the *paper form (chart)* or *electronic medical record database* that holds the patient's information belongs to the agency responsible for those records.

Information about an incident that is not private or specific to the health record (i.e. what happened, where did it happen, who was

involved, etc.) can be readily shared by those involved in responding to the situation through an **Incident Report**. The interests of those seeking information may vary from personal concern about one's employees, contractors or patrons, insurance and legal considerations, and a desire to enact real-time preventative efforts to ensure that others are not similarly affected.

We often receive requests for access to patient information. In order to set the right expectations, and to ensure that everyone respects the legislated environment we work in, we have put together this **FAQ** to assist in better understanding these tricky issues.

An attendee was injured on my site. I'm worried a lawsuit could be coming. I need a record to prove we've done nothing wrong! Can I get a report of some kind?



We get it. We totally understand why you'd want a copy of any and all documentation pertaining to an incident. Note that there is a difference between an '**incident report**' and a '**medical record**.' Odyssey leadership team members will absolutely assist in providing information that they can towards an incident report. However, the medical record itself may contain other protected information and as such cannot be shared without the patient's (or their legal alternative's) consent.

If you have not been served with legal paperwork, and wish to simply do a due-diligence follow-up, we would be pleased to provide you with an operational

summary, or incident report. These operational summaries will not have *private* patient information or any medical history/treatment information. This is to ensure confidentiality is maintained, as required by law. However, it should contain the information you need for your due diligence in investigating the incident.

Odyssey Medical was contracted by me to provide services at my event or venue. Why can I not just have a copy of patient records?

Care providers who offer first aid/medical services to patients are obligated to treat the information as personal, sensitive and confidential. Based on our patient interactions, we may receive information about current/past health problems, admissions of use of recreational substances and/or prescription medications, sexual history, mental health diagnoses, devices/implants used by patients, allegations of physical/sexual assault and/or many other sensitive matters. Sometimes, this information is vital to providing timely and appropriate care. The presumption of privacy between a health care provider and a patient is one of the fundamental principles and values of medical ethics. Without that, patients may omit sharing vital information for fear of litigation, job loss or stigma related to their private information.



Odyssey, by law, holds patient records confidential to comply with record retention requirements as dictated by the laws of each jurisdiction. As the central repository of patient records for our clients, we are obliged to protect patient privacy and confidentiality. The Supreme Court of Canada ruled that care providers are the owners of the records he/she created.¹ Medical records are protected by the laws in place for the collection, use and disclosure of patient information.² Regardless of the forms or format used to record the information, the general rule is that **a third party is not entitled to access to such record**. A patient must provide their consent for us to release their records, unless one of the legislated exception criteria is met. For example, disclosure of personal information to comply with a court order or ensure the patient receives urgent care to preserve life or prevents serious harm to themselves or others.



Medical records are shared amongst other directly involved health care providers in the interests of facilitating continuity of care. Legislation across the country permits sharing of information with other care providers on the team directly involved in a patient's care, and in hand-overs to subsequent teams assuming care. As such, copies of records created on event are typically copied and shared with a transporting ambulance service for forwarding on to a receiving emergency department.

Regardless of the person or organization that contracts our services, we cannot by law provide medical records to a third party without the express or implied consent of the patient involved. The disclosure of personal and sensitive information could cause irreparable injury to the reputation of the parties involved and may result in Odyssey (and its care providers) fined, sued or disciplined by a regulatory body.

¹ *McInerney v. MacDonald*, [1992] 2 SCR 138

² For example: in Ontario by the *Personal Health Information Protection Act*; In Alberta by the *Health Information Act* and in British Columbia by the *Personal Information Protection Act*

There is an investigation by WorkSafe or Occupational Health & Safety over injuries suffered by a worker on site. I have been asked to hand over records.

For “build and strike” shifts (i.e. where occupational/workplace/industrial first aid is the only service provided), the local laws in your jurisdiction may require first aid records to be readily available and accessible to the employer. In such a scenario, we are permitted to copy and release the information directly to the employer of the patient as required by legislation.

For all other contractual arrangements/events, the services provided in a non-occupational/workplace/industrial first aid setting may not be adequately captured through documentation on a workplace first aid record form. Such treatment will be recorded on our standard patient medical forms, and as such, will be treated as confidential. Investigative bodies may have the legal power to compel us to provide documents to them - and in such a scenario, the records will be provided directly to the investigative body concerned.

An incident happened on site, and I need the person who provided care to provide a statement to the police/law firm/insurance agency, etc.

Generally speaking, no one is compelled to provide a statement unless a subpoena or court order has been issued or as mandated by a specific piece of legislation.

Whether a care provider wishes to provide a statement is up to the individual's decision. If so, the care provider is entitled to obtain his/her legal advice prior to providing such a voluntary statement. We are not in a position to order/force such statement to be provided to a third party, absent of a demand from an appropriate investigative or judicial authority.

However, it is our policy to do our due diligence to capture circumstances, witness statements and other information as an incident report in support of our clients' and our own risk management programs. We are on the same side!



How does the patient get a copy of their records?

Generally speaking, an injured person may have a lawyer acting on his/her behalf. The patient would usually provide us with a signed consent form via their law firm requesting a copy of their medical record. In such a scenario, we will directly forward the records to the law firm.³ If the patient is directly requesting their own record, they must still provide us with written consent and payment of a service fee before a copy of medical record is released. Our online privacy policy outlines some of the information at: <https://odysseymedical.ca/privacy-policy/>

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For more information, or specific inquiries, please contact Stephen Chui at legal@odysseymedical.ca and/or Dr. Adam Lund at medicaldirection@odysseymedical.ca.



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³ There is a small service fee for sourcing, copying, handling and mailing forms as the service is not covered by provincial medical services plan. Depending on the jurisdiction, the fee is set by legislation or as determined by the relevant provincial medical association. In rare and exceptional circumstances, we may be obliged to refuse the disclosure of records if the withholding criterion by law is met.