



The Medical Council of Tasmania

PO Box 8,
South Hobart, 7004
Tasmania Australia

Telephone: +61(03).6233.5499
Facsimile: +61(03).6233.7986
Email: mct@medicalcounciltas.com.au
Website: www.medicalcounciltas.com.au

POLICY PAPER NO. 5

DISPOSAL OF MEDICAL RECORDS

**MEDICAL PRACTITIONERS REGISTRATION ACT 1996 (MPRA)
PART 6 – OFFENCES
DIVISION 2 – OFFENCES BY PRACTITIONERS AND BODIES CORPORATE**

Commencement Date:
Issue 1: 3 February 2006

Updated and reconfirmed:

Disposal of medical records

1. Section 69 of the MPRA states the following:

“(1) A person who ceases permanently to practise medicine, whether by reason of retirement or otherwise, must dispose of the medical records held by that person in an approved manner.

(2) The personal representative of a deceased medical practitioner must dispose of the medical records that were held by that medical practitioner in an approved manner.”

Failure to comply with these sections of the MPRA may result in a fine of up to 50 penalty units (\$5,000).

Section 45(2)(a) dictates that a medical practitioner is guilty of professional

misconduct if he or she contravenes a provision of this Act.

What is a Medical Record?

A medical record may be either a paper (hard copy) or a computer record (electronic copy) of the patient information relating to their history and medical care.

Ownership of Medical Records

The Australian Medical Association Position Statement entitled “*Transfer of medical records between treating doctors – 1998. Revised 2002.*” makes the statement that records containing patient medical information do not belong to the patient.

General comments

Disposal of medical records is the responsibility of a medical practitioner or the personal representative of a deceased medical practitioner.

It would be considered appropriate professional behaviour for a medical practitioner intending to leave a medical practice, to notify established patients directly and/or by letter (including facsimile or email) or indirectly by newspaper advertisement and by display of notices at the place of practice. Such notification should provide patients with options on the transfer of care and details of how their medical records may be transferred.

Ideally, all medical records will be disposed of by transfer to the patient or the patient's new medical advisor (with the patient's consent wherever practicable).

If all attempts to transfer the medical records to the patient or their new medical advisor have failed, destruction of those medical records (as outlined in Procedures Option 2 below), may be considered appropriate.

Destruction of patient medical records must only ever be done after careful consideration and advice. It is noted that for public medical records, a record must be kept of the files destroyed, the method of destruction and the date on which this occurred. Reference is made to the *Archives Act 1983*.

MEDICAL RECORDS

1. Retention of medical records

There is no statutory period for retention of private medical records, however, it is considered to be in the practitioner's own

interest to retain patient records for certain periods of time, particularly from the medico-legal point of view.

Council considers the following as acceptable retention periods for medical records of patients:

- * At least seven years after the last attendance, and in the case of minors (under 18 years of age) at least until they reach the age of 25 years.

2. Disposal of medical records

For the purposes of subsections (1) and (2) of section 69 of the MPRA, a person is taken to have disposed of medical records in an approved manner if the person does one, or any combination of, the following:

Procedures Option 1

Within 90 days of ceasing to practise or being appointed as personal representative, the person:

- (a) transfers those medical records to the custody of a registered medical practitioner or medical services provider, whether as a result of the sale or transfer of the relevant medical practice or otherwise, and gives Council written notification setting out the particulars of the transfer; under the provisions of subsection (3)(c) of section 69 of the MPRA; which states:

“.....and gives the Council a notice setting out particulars of the transfer before the expiration of a period of 90 days....”

- (b) transfers the individual patient medical records to the patient in question (unless the records relate to psychiatric care where it is not in the

patient's interests to see those records);

- (c) if the records relate to psychiatric care, transfers the individual patient medical records to another medical practitioner nominated by the patient; provided that a record is kept of all transfers made under (b) and (c) above.

Procedures Option 2

Medical records that have not been transferred after a reasonable period of time has elapsed since the practitioner ceased to practise, the practitioner or the personal representative of the practitioner if the practitioner is deceased may:

- Burn, shred or bury (as landfill under the careful direction of an employee of a Local Municipal Refuse Disposal facility) the medical records provided that a record is kept of the files destroyed.

The Medical Council has no ability to, and is not statutorily responsible for the storage of such medical records.

Disclaimer

2. In the case of any conflict or discrepancy between this document and the applicable legislation, the legislation prevails.

References

1. AMA Position Statement entitled "*Transfer of medical records between treating doctors – 1998. Revised 2002.*"
2. *Archives Act 1983.*