



College of Physicians and Surgeons of British Columbia

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Subject: College bylaw amendment re: retention of medical records

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February 13, 2013

Response to your comments about medical record retention bylaw amendment

Dear College registrant,

We appreciate all of your recent comments regarding the proposed amendment to section 3-6(2) of the College Bylaws regarding storage and retention of medical records.

As mentioned in our original notification to you on February 5, the proposed amendments are in response to changes in the *Limitation Act* due to take effect on June 1, 2013. These changes include an increase to the limitation time period (from six to 15 years) for individuals to file civil claims against physicians. While we appreciate your concerns, the College has no jurisdiction over legislation drafted by the Ministry of Justice.

The College's role is to ensure that registrants are aware of, and compliant with, laws and legal matters that affect them in their medical practice. The Bylaw amendments are being proposed in order to be consistent with the upcoming changes to the *Limitation Act*, and ultimately to protect registrants in the event of future lawsuits.

Following are answers to some of your questions

1. Was there consultation on the changes to the Limitation Act?

The law reform project began with a Green Paper, which was used in public consultations in 2007. Apparently, 290 groups and individuals participated in the consultation process. Proposals for legislative reforms were outlined in a 2010 White Paper, which included a consultation draft act. Sixty-eight individuals and organizations, including the BCMA and the CMPA, made submissions to the White Paper. Both the CMPA and BCMA submitted objections during the consultation process arguing that the proposed increase from six to 15 years was too long. Despite these objections, the Act was passed.

For more information about the *Limitation Act*, click here:

2. *Is the record retention period retroactive?*

As of June 1, 2013, all records must be kept for 16 years (15 plus 1) from the date of the last entry or from the age of majority, whichever is later. It is not acceptable to “cull” the portion of the patient record that is more than 16 years old. The entire record must be maintained.

For example, if the last time you made an entry on a patient record was three years ago in 2010, you will need to continue storing that patient’s entire record for another 13 years to a total of 16 years from the date of the last entry or from the age of majority, whichever is later.

3. *How long do I need to keep records of children under the age of majority?*

If the patient is under the age of 19 (age of majority), the entire record must be kept until that child turns 19 years old – plus another 16 years. For example, if your last entry was made when a child was 10, you will need to store his record for 25 years (9 plus 16).

4. *What about records that have been stored for seven years already? Do we need to continue storing them for 16 more years?*

The current requirements for record storage (seven years from either the date of last entry or from the age of majority, whichever is later) are in effect until May 31, 2013. Records that are in storage beyond June 1, 2013 must be retained according to the new requirements. (If you have records that have been stored in their entirety for seven years from either the date of last entry or from the age of majority, whichever is later, on May 31, 2013, they can be destroyed.)

5. *What does the CMPA say about record storage and retention?*

The CMPA’s advice is that physicians should retain records for a minimum of 10 years past the date of last entry or from the age of majority. The CMPA’s recommendations are based upon their perspective that a patient record should be retained for a sufficient period of time to be available to a physician in the event of legal action. The CMPA has no issue with this longer retention period.

6. *If I die before 16 years have passed, is my estate required to store my records?*

Yes. An individual’s estate can be sued so physicians are strongly encouraged to make arrangements for storage of their records as part of their estate planning. Membership in the CMPA includes ongoing protection for your estate assuming you are a member in the year of occurrence.

7. *If I retire and am no longer a registrant of the College, am I still obligated under College bylaws?*

The *Health Professions Act* gives authority to the College to investigate and take action against both current and former registrants. Physicians are reminded of their obligation to

comply with legislation that governs the profession during active practice, and after they retire.

8. Record storage can be expensive. Who will pay?

With more physicians using electronic medical records, the issue of storage costs will likely diminish with time. Those physicians who are still using paper records may wish to factor the cost of storage and destruction of medical records into their business and retirement planning.

We fully understand the implications these changes will have on practising physicians. In this case, the *Limitation Act* has already passed and will come into effect on June 1, 2013. The College's duty is to make you aware of applicable legislation and ensure that the laws governing our profession are aligned.

Sincerely,

H.M. Oetter, MD
Registrar

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