

DEPARTMENT: Risk Management

POLICY: RM-601

SUBJECT: Legal Requests

PURPOSE: To provide guidelines for staff when an attorney or others in connection with lawsuits and legal claims ask for information, or if there is a potentially compensatory event (PCE). Legal requests can include (but not limited to) requests for patient records from attorneys or law firms, subpoenas, notices of legal action, and requests to appear. This document will outline the steps needed to be taken by staff and the chain of notification required at each step. This document replaces the previous documents RM 601-Communications in Connection with Litigation and RM 601A-Handling Records in Litigation.

RESPONSIBILITY: Risk Manager, Director of Health Information Management (HIM)

POLICY: When an attorney or others involved in any lawsuit or legal claim ask employees for patient information, no information is to be released without the express permission and direction of the Chief Executive Officer, Chief Operating Officer, Hospital Legal Counsel, Director of Health Information Management, or Risk Manager. All requests for information must be made in writing with the appropriate permissions and release of information documents. All requests for information regarding PCE's or legal claims pertinent to the facility must be entered into the Montana Health Network (MHN) Risk software occurrence system (RLSolutions) and notification must be sent to MHN.

1. Requests for information not related to a PCE, or regarding events that happened outside of our facility.
 - a. Examples include, requests for patient records regarding insurance claims, requests for patient records to obtain disability or worker's compensation, class action law suits against manufacturers of products, or requests for patient records regarding auto accidents. This list is not all inclusive but meant to provide specific examples.
 - b. The director or supervisor of the employee receiving the request, the risk manager, and/or the director of HIM will be notified immediately of the request.
 - c. If the request is not submitted in writing, the requester will be informed that any requests for copies of medical records shall be written and submitted to the medical records department and approved by the Risk Manager prior to release of information. In certain cases, the facility's legal counsel may also be consulted prior to releasing copies of medical records.
 - d. If an attorney representing a patient or other party attempts to interview any employee or obtain written information, no information will be released.
 - e. If the patient is currently an inpatient, the patient's attending physician shall be notified.

- f. Copies of medical records will not be made available on the patient floor and provided to the requestor. Copies need to be requested at the Health Information Management Department.
 - g. Requests for employee to appear (subpoenas) or depositions: If an employee is subpoenaed for a deposition or trial, they will notify the Risk Manager or Director of Health Information Management, who will contact Legal Counsel for further advice.
2. The Chief Executive Officer (CEO), Chief Operating Officer (COO), or Risk Manager will notify the MHN Corporate Risk Manager of any outside requests for further information regarding a potentially compensable event (PCE), or any requests for copies of medical records of patients involved in an unusual occurrence, or any legal action taken as a result of the event.
 3. Confidential paper files or CDs of records requested will be kept in a locked drawer and filed alphabetically to protect the record from possible tampering, damage, or loss and to ensure that all records in litigation are handled consistently while also assuring that necessary information is available to practitioners for continuity of care.
 4. If hospital staff receive a request for records from a patient or authorized family member that could possibly be related to an occurrence at/within the facility, the staff member must contact Risk Manager and HIM Department Director.

PROCEDURE: Upon receiving a request from an attorney or the Montana Medical Legal Panel for copies of a medical record related to an event that took place at FMDH, is related to events that took place at FMDH, is related to physicians employed by FMDH, staff members of FMDH, or is considered a PCE, then the following steps will take place. These steps are to be initiated by or under the direction of the Risk Manager, Director of HIM, the CEO, the COO, or FMDH legal counsel.

1. If an Attorney Letter or a patient request for records is received related to an **occurrence at/within the facility**
 - a. Sequester Medical Record
 - b. Copy Medical Records requested to an encrypted CD (one copy to send and one copy to remain at FMDH).
 - c. Send Attorney Letter and a Copy of Medical Records that are requested to MHN at the Miles City office.
 - d. MHN will provide a Clinical Medical Record Review for completeness.
 - e. MHN will mail back the encrypted CD to facility (if applicable).
 - f. Facility will mail the encrypted CD to requesting attorney.
2. If a request for Medical Records is received from the **Montana Medical Legal Panel (MMLP)**
 - a. Sequester Medical Record.

- b. Copy Medical Records Requested to an encrypted CD.
 - c. Send MMLP request and Copy of Medical Records that are requested to MHN Miles City Office.
 - d. MHN will provide a Clinical Medical Record Review for completeness.
 - e. MHN will mail the encrypted CD to MHN Attorney.
 - f. Appointed Law firm will forward to MMLP-*It is understood that MMLP may require records within a short time frame. If unable to meet the time frame, the appointed Law Firm will notify MMLP regarding a delay of records. To confirm, you may contact Montana Health Network at 406-234-1420.*
 - g. MHN will mail a copy of the encrypted CD to facility.
3. An occurrence that may potentially become a claim (PCE): If an event occurs that FMDH feels could become a PCE, the Risk manager will enter the event into the MHN Risk software, contact MHN, and if advised by MHN will follow the following steps.
 - a. Copy Medical Records of occurrence to a CD.
 - b. Send CD to MHN and MHN will provide a Clinical Medical Record Review.
 - c. Following Review, MHN will destroy CD.
 4. Non-medical situations (i.e. patient fall outside our facility)
 - a. If there is a non-medical event that is a claim, send to the MHN Miles City office, a copy of any attorney letter or legal document and copies of any investigation, maintenance logs, or other pertinent information.
 - b. If there is a non-medical event that is a PCE, simply notify MHN.

Securing and storing records involved in a potential liability case:

1. If there is a potential liability problem, an additional CD of records will be made. The extra CDs made for FMDH will be placed in a locked file cabinet in the Hospital HIM Department or clinic medical record departments. The copy of the record will be kept in the patient's file folder.
2. If it determined there is no liability problem, the CD will be shredded.
3. Attending physicians will be informed of any request for information from an attorney or the Montana Medical Legal Panel.
4. If at the end of three years there has been no further correspondence concerning the medical record, the CDs will be shredded per facility policy.

REVIEW AND REVISION STATEMENT: Original documents were adopted by the Board of Trustees in 2006. This document replaces the previous Risk Management Documents 601 Communications in Connection with Litigation and RM 601A Handling Records in Litigation. This policy will be reviewed every two years or as necessary. Review will be accomplished by the Risk Manager, Director or HIM, and CEO.