1978 S.C. Op. Atty. Gen. 50 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-33, 1978 WL 27415

Office of the Attorney General

State of South Carolina
Opinion No. 78-33
February 17, 1978

***1** 1. The medical records of a patient in South Carolina are the property of the physician or the hospital which compiled them, and the patient has no ownership rights to them.

2. The patient also does not have unlimited, direct access to the medical records; however, he does have the right to the information in them concerning his treatment and afflictions. In addition, medical records of a patient may be sent to another physician at the direction of the patient.

3. A patient may obtain his records through subpoena or other discovery methods if litigation is pending or the records form the basis for litigation.

State Hospital

QUESTION:

What rights of access to and ownership of his medical records does a patient in South Carolina have when such records are in the possession of a physician or hospital?

STATUTES AND CASES:

Department of Health and Environmental Control Regulation No. 61–16, Section 501.4;

Emmett v. Eastern Dispensary and Casualty Hospital, 396 F.2d 931 (D.C.Cir.1967);

Gotkin v. Miller, 379 F.Supp. 859 (E.D.N.Y.1974), aff'd 514 F.2nd 124 (2nd Cir.1975);

In re Culbertson's Will, 57 Misc.2d 391, 293 N.Y.S. 806 (1968);

Cannel v. Medical & Surgical Clinic, 21 Ill.App.2d 383, 315 N.E.2d 278 (1974);

Estate of Finkel, 90 Misc.2d 550, 395 N.Y.S.2d 343 (1977);

American Medical Association, Judicial Council, Opinions and Report, 5.61, 5.62 and 5.63 (1977).

DISCUSSION:

The issue as to whether a patient in South Carolina has access to or ownership of his medical records is a novel one in South Carolina, for which there is no statutory or case law on point.

The only statutory law in South Carolina which deals with the question of ownership of medical records is found in the Department of Health and Environmental Control Regulation No. 61–16, Section 501.4, which states: “Ownership:

Records of patients are the property of the institution [the hospital] and must not be removed from the hospital property except by court order." This statute is consistent with the general trend in the United States towards treating medical records as the property of the hospital and not of the patient.

The AMA's position has been articulated by the Judicial Council as follows:
Medical notes made by a physician in private practice are for his own use in treating a patient and belong to him ... The record is physically the personal property of the physician, although the patient ... has certain legal rights to the information contained in the record about the patient's diagnosis and treatment ... Opinions and Reports, 1977, Opinion No. 5.62

...

A physician is under no obligation to turn his records over to his patients ... Opinion No. 5.63.

The issue of ownership of a physician's medical records arose in New York in 1968, and in that jurisdiction it was held that medical records are the property of the physician. In re Culbertson's Will, 57 Misc.2d 391, 292 N.Y.S.2d 806 (1968). The reasoning in that case is compelling and gives judicial support to the abovementioned position of the AMA:
***2** This Court is satisfied, however, that records taken by a doctor in the examination and treatment of a patient become property belonging to the doctor. Generally speaking, an individual does not seek out a doctor for the purpose of obtaining records for his personal use, but seeks the personal services of his physician in the area of examination, diagnosis and treatment. The records and notes constitute a history of the case of benefit only to a physician as part of his clinical record concerning a particular patient. 292 N.Y.S.2d at 807–808.

Since the law in South Carolina states that hospital medical records are the property of the hospital, it is a logical extension of the law to follow the Culbertson decision and the AMA opinions. See also, Gotkin v. Miller, 379 F.Supp. 859 (E.D.N.Y.1974, aff'd, 514 F.2d 129 (2nd Cir.1975); Cannel v. Medical & Surgical Clinic, 21 Ill.App.3d 383, 315 N.E.2d 278 (1974); Estate of Finkel, 90 Misc.2d 550, 395, N.Y.S.2d 343 (1977).

Although a patient does not own the medical records kept by a physician or hospital, the special relationship between a physician and a patient requires that the patient have some sort of access to them or control over them. In order that the best interests of the patient may be served and that his treatment may be the most appropriate, the patient must be able to provide any physician treating him with the most complete medical information concerning him that is available. This requires that the patient be able to direct a physician, who has treated him in the past, to send a copy of his medical records to the doctor presently treating him. The Judicial Council of the AMA has decided:
The interest of the patient is paramount in the practice of medicine, and everything that can reasonably and lawfully be done to serve that interest must be done by all physicians who have served or are serving the patient. When a colleague who is presently treating a patient requests records from another physician who has formerly treated the patient, that former physician should promptly make his records available to the attending physician.

...

It is unethical for a physician, who has formerly treated a patient, to refuse for any reason to make his records of that patient promptly available on request to another physician presently treating the patient. Opinion No. 5.61 (Emphasis added).

The question of patient access to his records is a different issue. There is no doubt that the patient has a right to the information in his records, but this does not necessarily give him unlimited, if any, right to examine the raw records of his physician. He may direct the physician to disclose to him or his legal representative information in his record. In re Culbertson's Will, 57 Misc.2d 391, 393, 292 N.Y.S.2d 806, 808 (1968).

Other jurisdictions are divided on the question of direct access to medical records, but the reasoning in Gotkin v. Miller, supra, is the most realistic:

***3** [A] medical record in the hospital or the physician's office is far more than a series of entries reporting diagnoses, doctor's orders and actions taken pursuant to such orders. In the hospital setting the record is a complex of communications between health officials, including a written history and physical progress notes, nurses' notes, consultations, lab reports, operation summary, discharge summary and the like. During the course of a particular hospitalization, the record may include a wide spectrum of speculation and observation as the various members of the health team contribute thoughts and observations that lead eventually to the final diagnosis. If not properly explained, many of these entries could be exceedingly disturbing to a patient already apprehensive. However, to deter such entries could often eliminate the very clues that lead to successful diagnosis and treatment. 379 F.Supp. at 866, quoting Department of Health, Education, and Welfare, Appendix to Report of Secretary's Commission on Medical Malpractice, at 76 (1973).

The medical records of a patient are the notes and records of the treatment by the physician, and they are prepared in response to the needs of the physician. They are not written to comply with the needs of the patient, and they are not kept in such a fashion that the layman patient could understand them.

The importance of the medical records for the patient lies in the information they contain, and the law and the AMA recognize the needs for access by the patient to the information. The AMA's Judicial Council stated in Opinion 5.62: "The record is physically the personal property of the physician, although the patient (or his legal representative) has certain legal rights to the information contained in the record about the patient's diagnosis and treatment."

Although the patient does not have unlimited access to his medical records, he may obtain them by subpoena or other discovery methods when they are pertinent to pending litigation. In such instances, the patient or his legal representative is entitled to examine the records which the physician or hospital may have compiled relative to him.

CONCLUSION:

1. The medical records of a patient in South Carolina are the property of the physician or the hospital which compiled them, and the patient has no ownership rights to them.

2. The patient also does not have unlimited, direct access to the medical records; however, he does have the right to the information in them concerning his treatment and afflictions. In addition, medical records of a patient may be sent to another physician at the direction of the patient.

3. A patient may obtain his records through subpoena or other discovery methods if litigation is pending or the records form the basis for litigation.

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