

Obligation Re: Disclosure of Medical or Health Record under s.76 of the *Health Care Consent Act, 1996*



Section 76, *Health Care Consent Act, 1996*

76. (1) Before the hearing, the parties shall be given an opportunity to examine and copy any documentary evidence that will be produced and any report whose contents will be given in evidence. 1996, c. 2, Sched. A, s. 76 (1).

Health record

(2) The party who is the subject of the treatment, the admission or the personal assistance service, as the case may be, and the person authorized under the *Law Society Act* to represent him or her are entitled to examine and to copy, at their own expense, any medical or other health record prepared in respect of the party, subject to subsections 35 (6) and (7) of the *Mental Health Act* (withholding record of personal health information), subsections 33 (2), (3) and (4) of the *Home Care and Community Services Act, 1994* (withholding record of personal health information) and subsections 183 (2) to (6) of the *Child and Family Services Act* (withholding record of mental disorder). 2004, c. 3, Sched. A, s. 84 (11); 2006, c. 21, Sched. C, s. 111 (3); 2007, c. 8, s. 207 (16).

Counsel representing a patient in a CCB hearing have a legal right to full access to his/her client's medical or health records (*Health Care Consent Act, s.76*). Given the very tight time lines involved in a CCB hearing, the lawyer representing a patient in a specific hearing will not generally have a signed consent from the patient, and may not have other documentation to confirm the appointment. It is nonetheless imperative that the lawyer be provided immediate access to the patient's complete file so that he/she may properly represent the client.

This is the case whether a CCB hearing in the matter has been scheduled or not. The Board notes that there is no requirement within s.76 of the *Health Care Consent Act* that a Notice of Hearing be issued prior to compliance with the clear legal obligation to provide the medical and health records to counsel. The matters before the Consent and Capacity Board are often of an urgent nature and, in all cases, disclosure of these records must be provided promptly to counsel.

There are strict Law Society professional rules and obligations imposed on lawyers who indicate that they represent a specific client. As such, there is no need for the lawyer to provide anything in writing from the client/patient, Legal Aid or from the lawyer himself/herself. As well, the CCB is not in a position to confirm whether a specific lawyer is representing a patient as this information may change over the course of an application.

If counsel requests records for a CCB matter, and your facility is concerned about whether counsel is representing the applicant, the Board suggests that your staff ask the lawyer to provide his/her name and business card (or The Law Society of Upper Canada card) and to orally confirm that s/he is representing the patient in a CCB hearing. This information can be documented in the patient's chart or in the facility's records. Full access to the records should then be immediately provided to the lawyer.