Law In Brief: Record Holder May Deny Access to Mental Health Record

Under Michigan law, Michigan Attorney General, Opinion Number 5125, issued May 25, 1978, access to a mental health record is dependant upon the holder of the record agreeing that access is appropriate. Section 748 of the Mental Health Code, 1974 PA 258; MCL 330.1748 denies a patient \textit{unlimited} access to his or her medical records. The Attorney General concluded in his Opinion that “the consent of the holder of mental health records is a condition precedent to the disclosure of the record to the recipient. If the holder believes that disclosure would be detrimental to the recipient or others, the record or parts of the record can be withheld. The Attorney General concluded that “the law pertaining to the disclosure of the medical records of a mental patient recognizes a degree of professional discretion resting with the record holder. Thus, it is my opinion that 1974 PA 258, \textit{supra}, Sec. 748 of the Mental Health Code is constitutional in granting to the record holder the discretion to withhold information when in his judgment disclosure would be detrimental. This decision must not be arbitrary or capricious, however, and must be based on a medical judgment made in good faith and in the patient's best interest. Further, such medical judgment should be appropriately recorded.” See MCL 330.1748(4) and Michigan Administrative Rule 330.7051. The MAR provides an outline of the procedure to be used by the provider in the case of declining to disclose information to the recipient. In addition, HIPAA also provides a procedure for notice and right to appeal of the denial of access. The provider needs to use a process that complies with both procedures.

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