



# Requests from Defence Lawyers

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This document is a practice standard of the Board of the College of Physicians and Surgeons of British Columbia.

In all matters involving the patient-physician relationship, the maintenance of patient confidentiality and the importance of seeking patient consent for release or disclosure of information are of paramount importance. Physicians are frequently asked by defence lawyers to provide or discuss information regarding patients who may be involved in a personal injury lawsuit. In such situations, physicians have an ethical and professional obligation to discuss such requests with the patient and/or the patient's lawyer, and to give due consideration to the patient's wishes.

There is legal case authority in British Columbia that the commencement of a personal injury lawsuit constitutes an implied waiver of physician patient confidentiality for medical matters relevant to the lawsuit. However, it is important for physicians to understand that this case authority does not obligate them to discuss their patients' medical information with defence counsel. The College's position is that physicians should review with their patient and/or their patient's lawyer all such requests for information or interviews and, consistent with their ethical responsibilities, give due consideration to the patient's wishes.

On December 21, 1995 the Supreme Court of British Columbia, in the case of \_\_\_\_\_,<sup>1</sup> addressed the following issues, in the context of civil litigation involving a person's health:

1. Whether defence counsel should be able to interview a plaintiff's physician without this constituting a breach of confidentiality.
2. If such interviews are permitted, what procedure should be followed.

The court decided that when a person puts his or her health in issue in litigation, there is an implied waiver of confidentiality with respect to all relevant information there is an

This means that, in certain circumstances, defence counsel can interview plaintiffs' physicians without this constituting a breach of confidentiality. The court set out the procedure to be followed prior to any such interviews:

1. As is the current common practice, with appropriate patient authorization or court order, medical records will be produced to and reviewed by the plaintiff's lawyers and all relevant documents will, subject to any claim for privilege, be produced to the defendant's lawyer.
2. Defence lawyers will have an opportunity to review the produced records and argue if they feel additional records are relevant or producible.
3. Once the relevant records have been produced and agreed upon, defence counsel will be able to contact the plaintiff's physicians and discuss with them the relevant information, provided the following process is followed:
  - o Defence counsel must give notice to plaintiff's counsel of their intention to seek informal discussions with the physician;
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