

MINNESOTA'S PATIENT CONSENT REQUIREMENTS – TWO VIEWS

Minnesota Statutes § 144.335, Subdivision 3a

Subd. 3a. **Patient consent to release of records; liability.** (a) A provider, or a person who receives health records from a provider, may not release a patient's health records to a person without a signed and dated consent from the patient or the patient's legally authorized representative authorizing the release, unless the release is specifically authorized by law. Except as provided in paragraph (c) or (d), a consent is valid for one year or for a lesser period specified in the consent or for a different period provided by law.

- (b) This subdivision does not prohibit the release of health records:
- (1) for a medical emergency when the provider is unable to obtain the patient's consent due to the patient's condition or the nature of the medical emergency; or
 - (2) to other providers within related health care entities when necessary for the current treatment of the patient.
- (c) Notwithstanding paragraph (a), if a patient explicitly gives informed consent to the release of health records for the purposes and pursuant to the restrictions in clauses (1) and (2), the consent does not expire after one year for:
- (1) the release of health records to a provider who is being advised or consulted with in connection with the current treatment of the patient;

Two Interpretations of "Current Treatment"

During a patient's initial visit to a health care provider, the patient is usually asked to complete a general consent for the release of health records to providers who are being advised or consulted with in connection with the current treatment of the patient. This general consent does not expire, but may be revoked.

Although most providers obtain this general patient consent, there are at least two interpretations about when information is permitted to be released under the general consent:

- **Interpretation 1:** This interpretation holds that the general consent permits the provider to disclose any health information at any time to any provider who is currently treating the patient. Note: Any health information means information not covered by another law (e.g., substance abuse treatment data and genetic data).

This interpretation reads the highlighted portion of the Statute as:

(1) the release of health records to a provider who is ~~being advised or consulted with in connection with the current treatment of~~ currently treating the patient;

- **Interpretation 2:** This interpretation holds that the general consent only permits the provider to disclose health records to other providers being advised or consulted in relation to the releasing provider's current treatment of the patient (e.g., for continuity of care or referrals).

This interpretation reads the highlighted portion of the Statute as:

(1) the release of health records to a provider who is being advised or consulted with in connection with the releasing provider's current treatment of the patient;