

**LETTER OPINION
2003-L-02**

January 16, 2003

Mr. Gary R. Thune
North Dakota Board of Podiatric Medicine
PO Box 400
Bismarck, ND 58502-0400

Dear Mr. Thune:

Thank you for your letter asking whether a patient's medical records, as that term is used in N.D.C.C. § 23-12-14, include radiographs or X-rays. Section 23-12-14, N.D.C.C., requires that a medical provider give a free copy of a patient's medical records to another medical provider or other person authorized by the patient for the purpose of transferring the patient's medical care to another medical provider for continuation of medical treatment, and allows a limited charge for providing a copy of the patient's medical records for other purposes.

Section 23-12-14, N.D.C.C., does not contain a definition of the term "medical records." Further, the term "medical records" is not defined in the North Dakota Century Code.¹ The Supreme Court has provided guidance when interpreting statutes:

The interpretation of a statute is a question of law, fully reviewable by [the Supreme] court. . . . The primary purpose of statutory construction is to ascertain the intent of the Legislature. . . . The Legislature's intent initially must be sought from the language of a statute. . . . Unless words in a statute are defined in the code, they are to be given their plain, ordinary, and commonly understood meaning.

Kim-Go v. J.P. Furlong Enterprises, Inc., 460 N.W.2d 694, 696 (N.D. 1990) (citations omitted). "Medical" is an adjective implying that the described item is of or pertaining to the study or practice of medicine. The American Heritage Dictionary 781 (2d coll. ed. 1991). The noun "record" is defined as an account, as of information or facts, set down especially in writing as a means of preserving knowledge; something on which such an account is made; something that records; or information or data on a particular subject that has been collected or preserved. Id. at 1035. "Record" also means something on which

¹ A computer search revealed 43 sections of the North Dakota Century Code to contain the term, but none of these sections defined "medical record."

sound or visual images have been recorded. *Id.* An X-ray is a photograph taken with X-rays, which are high-energy photons. *Id.* at 1396. It records the condition of the patient at the time the X-ray is taken. Taking these words together, the commonly understood meaning of the term “medical records” would include an X-ray film of the patient.

This interpretation is consistent with the self-evident purpose of enacting N.D.C.C. § 23-12-14. A patient may require a medical provider to provide a free copy of the patient’s medical records for the purpose of transferring that patient’s medical care to another medical provider for the continuation of medical treatment or may require a copy of the patient’s medical records for any other purpose for a fee. N.D.C.C. § 23-12-14(1). If an X-ray was made for the purpose of diagnosis, treatment, or to provide a basis for comparison of future changes that may occur to the patient’s health, then that X-ray would be necessary for another medical provider to continue medical treatment of the patient. The inability of the patient’s succeeding medical provider to obtain a copy of the patient’s X-ray would be just as much of a handicap in providing continued medical treatment as would be a lack of a written record of the patient’s treatment. Further, other reasons that a patient might request a medical record could include a lawsuit against the source of injury or a malpractice claim against the initial treating medical provider. For both of these purposes, a copy of the X-ray may also be necessary. Therefore, even assuming there to be some question of whether an X-ray is meant to be included within the scope of the term “medical records” as used in N.D.C.C. § 23-12-14, it becomes evident that the purpose of the statute would be thwarted if the statute did not include X-rays or other images recorded of the patient. See Northern X-Ray Co., Inc. v. State, 542 N.W.2d 733, 736 (N.D. 1996) (an ambiguous statute is interpreted according to the “mischief rule” by examining the mischief that the statute was to correct and interpreting it in light of the legislative purpose).

Therefore, it is my opinion that the term “medical records,” as used in N.D.C.C. § 23-12-14, includes X-ray film.²

² In addition, and, although not directly controlling, it is interesting to note that under the Health Insurance Portability and Accountability Act (HIPAA) privacy rule, “health information” is defined to include “any information, whether oral or recorded in any form or medium that . . . relates to the past, present, or future physical or mental health or condition of an individual . . .,” 45 C.F.R. § 160.103, and, thus, would clearly include X-rays. A discussion of the meaning of “health information” contained in the preamble to the privacy rule explaining the definition of “protected health information” confirms this conclusion:

Comment: Some commenters requested clarification as to how certain types of health information, such as photographs, faxes, X-Rays, CT-scans, and others would be classified as protected or not under the rule.

Response: All types of individually identifiable health information in any form, including those described, when maintained or transmitted by a covered entity are covered in the final rule.

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Sincerely,

Wayne Stenehjem
Attorney General

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Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82,620 (December 28, 2000).