

Physician-Patient Privilege After Wrongful Death: How the Law Applies and When It's Waived

As a general rule of law, physician-patient privilege protects the privacy of a patient's medical history as per [HIPAA guidelines](#) and any other laws that are applicable in the state the patient resides. However, controversy tends to arise quickly when a patient suffers an unexpected wrongful death and their records are legally necessary for the surviving family to pursue legal action. According to the law, there are several factors that apply in the case of a wrongful death in which medical records are necessary.

In certain states, there are laws that allow the deceased's next of kin or a previously appointed representative to waive the physician-patient privilege in order to disclose medical records. This is only in order to pursue the necessary legal action necessary to provide for a family after the death of a loved one. It does not apply to simply grant access to the family so they may read the records.

Waiver of privilege: there are still some strings attached

It's important to understand the *waiver of privilege* in full as it is another area of personal injury law that becomes complex and difficult to navigate without a board certified civil trial attorney representing the case. First of all, many state laws governing public health only require the disclosure of medical documentation (records, imaging, lab results, surgical reports) only to hospitals and other physicians with knowledge of the deceased's case.

It's not as simple as retaining legal counsel

These laws do not provide disclosure on the behalf of the attorney representing the family and thusly, the family must have an appointed representative to gain access to the deceased's medical records. The plaintiff in a wrongful death lawsuit will have a less difficult time accessing their loved one's records if they are forthcoming in their request. This means that by stating the reason they are requesting the records is in the event of future litigation, they will most times be granted access to the records without further difficulty.

So what happens post physician-patient privilege waiver?

In specific instances, bringing a wrongful death lawsuit is enough to garner the waiver of physician-patient privilege and no further action is required to obtain the documents needed to proceed with litigation.

The process that transpires post-waiver is in place to provide only the records that are relevant within the context of the wrongful death lawsuit and nothing further. This protects the decedent's right to privacy ([and is in line with HIPAA law](#)) and care is taken to maintain physician-patient privilege as much as possible.

Abiding by these guidelines, a doctor or hospital is able to provide necessary documentation to the appointed representative, granting them the access they need to pursue litigation on behalf of the surviving family members without "over revealing" the deceased's medical history that does not provide any relevance to the case at hand.

Don't fear legal jargon: "combined actions"

Usually, the patient-privilege is waived in regard to medical treatment related to personal injury when the plaintiff seeks legal action for negligence or malpractice. This is what's known to attorneys as a "combined action", and while it may seem complex, an experienced attorney won't have a problem navigating its specific requirements.

A combined action takes into account not only the wrongful death that occurred, but the personal injury claim made against a defendant as well. It's not uncommon for a wrongful death action to include efforts to seek damages for personal injury. This is because the decedent may have suffered great pain before death

due to the negligence of the defendant; a careless doctor, a surgeon who acted outside of their scope of practice, a nurse who failed in her duty of care, etc.

Where is the line drawn? Are victims of wrongful death truly protected?

There is a line drawn even when combined action applies. This is in place because the deceased may have suffered terribly prior to the wrongful death and therefore their privacy is strictly maintained to preserve their dignity (and the dignity of the surviving family members, in some such cases).

To ensure this, unless the family members can prove the victim suffered outside the scope of the injury that caused the death (i.e.: the reckless behavior of another, physically being maimed or assaulted prior to death) they cannot access records that are not relevant to the lawsuit.

Contact us to schedule a complimentary consultation. There's no obligation. Take the first step and call today: (877). 529-0080

© Sagi Shaked Esq.