



Magistrates' Court Victoria

Practice Direction

No. 1 of 2012

Accident Compensation Act 1985

Background

The Magistrates' Court is concerned to address the problem of managing a large number of medical and other records that are the subject of subpoenas to produce documents in proceedings under the Accident Compensation Act 1985.

This Practice Direction regulates the process of inspection by a defendant to a proceeding of relevant medical and other records relating to the plaintiff having regard to Order 42A of the Magistrates' Court General Civil Procedure Rules 2010 ("the Rules").

It is intended that this Practice Direction apply to, and work in tandem with, procedures for inspection of medical records prior to the issue of a subpoena in accordance with Order 42A of the Rules.

Direction

1. A directions hearing will be convened ten weeks after the day on which a notice of defence is filed in a proceeding. It is expected that the person appearing for a party will have detailed knowledge of his or her client's case. The costs of such attendance will be in accordance with the relevant item of the scale of costs in Appendix A of the Rules.
2. It is expected that the parties to the proceeding will have resolved all interlocutory issues prior to the directions hearing including the exchange of medical reports and the inspection of relevant medical and other records.
3. It is further expected that if a party wishes to refer medical questions to a Medical Panel for an opinion then the application to do so will be made prior to the date of the directions hearing.
4. Subject to the completion of all interlocutory matters including the exchange of medical reports and the inspection of relevant medical and other records the proceeding will be set down for trial at the directions hearing.
5. If a defendant wishes to inspect the medical and other records relating to a plaintiff then the defendant must write to the plaintiff's solicitor to the following effect:
 - (a) requesting the identification of the plaintiff's treating medical and like practitioners on which the plaintiff intends to rely;
 - (b) requesting that the plaintiff supply a copy of any medical and other records held by the plaintiff's solicitors which the defendant wishes to inspect; and

- (c) undertaking that the defendant will pay the reasonable photocopying expenses incurred as a result of the plaintiff complying with (b).
6. It is expected that the plaintiff's solicitor will advise the defendant's solicitor within 21 days whether or not the records are available for inspection.
 7. If the requested records are not provided within 21 days then the defendant's solicitor should write to the relevant doctor foreshadowing the issue and service of a Subpoena for Production to Registrar state further:
 - (a) the reason for the need to obtain access to the records;
 - (b) the desirability of obtaining access to the records;
 - (c) the need to save court time;
 - (d) the need to avoid inconvenience to the doctor;
 - (e) the need to facilitate negotiations between the parties prior to the date of trial;
 - (f) an undertaking by the solicitor to pay the doctor's reasonable photocopying charges so that the doctor can retain photocopies of the records for his or her use pending the return of the original records;
 - (g) that providing the records to the court may obviate the need to attend the court on the trial date;
 - (h) if the records contain sensitive personal information unrelated to the plaintiff's employment then the doctor should be requested to advise the plaintiff's solicitor so that steps can be taken to protect that information by use of a two envelope procedure; and
 - (i) that the records should be forwarded only to the court on receipt of a Subpoena for Production to Registrar in accordance with Order 42A of the Rules.
 8. Upon the issue of a subpoena in accordance with Order 42A of the Rules, the parties are thereafter required to comply with those Rules.
 9. This Practice Direction applies only to workers compensation and personal injury damages proceedings irrespective of the date of issue of such proceedings.

Revocation of previous Practice Directions

This Practice Direction revokes Practice Directions 2/2004 and 14/2004.

Commencement

This Practice Direction has effect from 1 February 2012.



Ian L Gray
Chief Magistrate
23 January 2012