

## Health Information Compliance Alert

### Reader Question: What To Do When Another Provider Refuses To Release Records

**Question:** We're treating a new patient and need to obtain the patient's prior treatment records. The patient has requested that our office receive the records, per his access request. But the other provider notified our office that it will not grant the disclosure request and won't send the records. What should we do?

**Answer:** "This is a difficult problem to solve, because the new provider has little leverage over the prior provider(s)," stated **Bruce Borkosky, Psy.D.** in a February 2014 whitepaper for **MalvernGroup Incorporated.**

**Best bet:** First, find out whether the prior provider would be more comfortable sending the records to the patient directly, instead of to your office, Borkosky advised. If so, the patient can then forward the records to you, the new provider.

Although this is likely the best, easiest and lowest-impact solution to the problem, you do have a few other options:

**1. Have a discussion.** Although the provider's reasons for denying the disclosure may or may not be rational, the provider might be open to reason, Borkosky said. "Consider discussing the state laws and rules, as well as HIPAA regulations that require providers to release records to other providers for treatment."

"Consider mentioning state disciplinary cases, if your state has ever sanctioned someone for failing to release records for treatment," Borkosky suggested. Also consider discussing the **U.S. Department of Health and Human Services** (HHS) case examples and resolution agreements published on its website ([www.hhs.gov/ocr/privacy/hipaa/enforcement/examples](http://www.hhs.gov/ocr/privacy/hipaa/enforcement/examples)).

"If the provider is employed by an agency or in a group practice, a short telephone call (or even a fax) to the agency's attorney or business manager can make a huge difference," Borkosky noted. "The attorney is likely to have a clearer understanding of the HIPAA Privacy Rule and the potential for liability for failing to comply with it."

**2. File a disciplinary complaint.** You could file a disciplinary complaint under the provider's licensing agency, but it can be time-consuming to complete the paperwork, Borkosky noted. This can also require many months for resolution, be expensive for taxpayers, create ill will among fellow providers, and be a sledge-hammer-solution when a needle would do.

Additionally, filing a disciplinary complaint "may ultimately result in no findings if the licensing agency views it as a minor offense," Borkosky said. "Similarly, a HIPAA complaint can take years to resolve and may result in nothing more than a 'letter of education.'"

**3. Ask your attorney to draft a letter.** You might consider asking your attorney to draft a letter on the patient's behalf, Borkosky stated. But this can also be expensive and time-consuming. "Although it may impress or intimidate some providers, others might recognize that such a letter carries no force of law," he added.