

Submission notes from conversation between Dr Peter Sharman and Bec Bradfield 6/7/23 for TLRI
Privacy reference

Use of submission

Peter has signed a consent to use as a public submission

Submission

Peter is a medical practitioner who works in the worker's compensation space. His concerns relates to commonwealth and state court proceedings and the practice of insurance companies subpoenaing medical records of patients. This is more commonly the first approach of insurers in litigation for worker's compensation rather than requesting a report, which would be the appropriate approach in the first instance.

Peter is not concerned about providing reports or letters on the medical file in this process as these are written for a broader audience. The concern is in relation to doctor's consultation notes that are written for the doctor and not for the purposes of scrutiny by others without medical expertise.

The use of a summons as a routine method of obtaining relevant medical information is inappropriate and very intrusive. It undermines the confidence of people referred to doctors when the reality is that files are not confidential and private due to the summoning of files. It may cause doctors to use cryptic abbreviations or not record sensitive information in the file. The concern is that medical notes may contain extremely sensitive information and then the insurer subpoenas the whole file and in this way is conducting a fishing expedition to see if they have find something to help with their case.

There is a right to object to the subpoena but many doctors are unaware of this.

This concern is one that is held commonly by doctors.

The solution is to set out principles in relation to gaining medical information for civil litigation:

- (1) Subpoenaing should be a last resort and not the first way of getting medical information
- (2) If information is subpoenaed, there should be a requirement to narrow the focus of what is asked for and not request the whole file but what is actually needed
- (3) There should be a higher bar for insurers to access consultation notes. These should have a protected status compared with reports and letters that are written for a wider audience.

Another issue that can arise where privacy creates barriers is where a doctor becomes aware of a pattern of another doctor giving unusual or 'odd' medical opinions due to seeing several reports from that doctor over time and it is not possible to report the doctor based on that information.