MEMORANDUM

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RELEASE OF MEDICAL RECORDS OF DECEASED PATIENTS (DECEDENTS)

A spouse, child, sibling or other legal representative of a deceased patient may wish to obtain copies of the decedent's medical records. In many cases, the individual seeking the records has been appointed the legal representative of the estate and is legally authorized to access the record. However, state law also permits release of a deceased patient's medical record to a "distributee" (usually a family member) of a deceased patient for whom no estate representative has been appointed.[1] Thus, with proper documentation, a family member may obtain a copy of the deceased patient's medical record.

A request for a deceased patient's medical record should always be in writing. General rules for documentation accompanying the request are as follows:

Individual Requesting Records	**Documents to Accompany Request**
Administrator or Executor of the Estate	Copy of the Letters of Administration or Letters Testamentary issued by the Surrogate Court.
Distributee (spouse, child, sibling - where no estate representative has been appointed by the court.)	Copy of the certified copy of the death certificate. We also recommend a signed affidavit stating that no estate representative has been appointed. (Sample affidavit attached).
Attorney-at-law who represents the estate or a distributee	HIPAA compliant authorization form signed by the estate representative or the distributee; or a power of attorney form signed by the estate representative or a distributee given to the attorney at law. If there is a power of attorney, a copy must be attached. In lieu of a signed affidavit from the distributee, the attorney may submit a letter stating that no estate representative has been appointed.
Power of Attorney (non-attorney)	Power of attorney form signed by a distributee giving power to another person, a copy of a certified copy of the death certificate and the recommended affidavit (see above).

[1] *Public Health Law §18(1)(g).*

Distributee Certification Form
Public Health Law Section 18

This form is to be completed by a relative of a deceased patient who is seeking a copy of the deceased patient's medical record. Use this form if no Letters of Administration or Letters Testamentary have been issued to any individual as Administrator or Executor of the patient's estate.

I, _____, being first duly sworn, depose and say:

☐ 1. I am over 18 years of age.

☐ 2. I reside at _____

☐ 3. I am requesting the medical records of _____ (Patient), who has died.

☐ 4. I have attached a copy of a certified copy of Patient's death certificate.

☐ 5. No Letters of Administration or Letters Testamentary have been issued to any individual as Administrator/Executor of the estate.

6. I am the Patient's distributee for the following reason:

- ☐ HUSBAND OR WIFE: I was married to the Patient at the time of the Patient's death.
- ☐ CHILD: I am the Patient's natural or legally adopted child.
- ☐ GRANDCHILD: I am the Patient's natural or legally adopted grandchild. My parent, who was the Patient's natural or legally adopted child, is no longer living.
- ☐ PARENT: I am the Patient's natural or legally adoptive Parent. The Patient has no living husband or wife, children, grandchildren or great-grandchildren.
- ☐ BROTHER OR SISTER: I am the Patient's natural or adoptive brother or sister. The Patient has no living parents, husband or wife, children, grandchildren or great-grandchildren.
- ☐ OTHER: I am the Patient's _____

The statements I have made are true and accurate to the best of my knowledge. I understand that making a false statement in this document is a felony punishable by imprisonment, fine or both.

_____
Signature of Requesting Party

Sworn to and subscribed before me
this _____ day of _____, 20_____.

_____
Notary Public

HIV or Alcohol/Drug Treatment Program Information

When a deceased patient's medical record contains HIV-related information, there is no automatic right of access for distributees or attorneys. The executor or administrator of an estate is allowed access to confidential HIV-related information of a deceased person as needed to fulfill his/her responsibilities or duties as executor or administrator. Further, the beneficiary or a claimant for benefits under an insurance policy, health service plan or employee welfare benefit plan may consent to release the decedent's HIV-related information to the plan. A court order is required for release of the HIV-related information in all other situations. A subpoena or HIPAA authorization signed by a distributee is not enough to release HIV-related information contained in a medical record of a deceased patient.

If the record contains only one or two references to HIV-related information, the information may be redacted prior to releasing the record. (If the request was for a certified copy of the record, and you redact HIV information, you must state on the certification that the record is not complete.)

When a deceased patient's medical record contains information from an alcohol or drug treatment program, consent to release records may be given by the estate representative or released pursuant to a court order.