

Requests for Pathology Specimens

When you receive requests for pathology specimens—original tissue slides, blocks, or cytology smears—remember that these are irreplaceable materials that may become evidence in a malpractice claim, and follow the steps outlined in this article.

These materials are the property of the laboratory to which they are submitted. Pathologists are obliged to use such materials for patient benefit and have an added responsibility to maintain them in a safe and secure environment.

You will periodically receive requests from attorneys for slides, fixed tissue, or blocks. Knowing how to respond will help safeguard these specimens and minimize your liability. All requests require the written authorization of the patient.

It is necessary to separate requests into medical and legal categories. Medical requests may be urgently generated for continuity of care issues or be necessary for follow-up of medical conditions. Patients often relocate, and the new doctor may want (or need) to learn previous medical history details. Specialty referrals to another medical center constitute yet another of the need-to-know scenarios.

However, even when a request appears to be purely medical, you must take steps to preserve original, irreplaceable materials—to the extent possible—in the event that providing the requested information might lead to a claim or a lawsuit against you or another clinician.

Medically Motivated Requests

If only histopathology slides are requested, prepare recuts, and label them as such to avoid any confusion with the original slides in the event of a claim or lawsuit. Examine the slides for comparability. If they are comparable, send only the recuts and a copy of your report. Retain the original slides.

If your review of the original slides or recuts reveals an error by you or a colleague, you should prepare an amended report. That report should be sent to the original treating physician and to the requesting doctor, along with a letter of explanation. Do not be defensive; merely state the facts. A personal phone call to the original doctor and to the requester is recommended, and such calls should be documented and dated—preferably in the amended report. Notify your regional Claims office of the possibility of a potential claim when an amended report is issued.

If original slides must be sent because recuts are not comparable, or if irreplaceable items such as cytology smears are requested, you have no choice in purely medical situations but to comply.

When responding to medically motivated requests, always follow the procedures described below:

- Include a cover letter indicating what has been sent. Your letter may include a generic check-off list of the various materials that are apt to be requested. Leave a space at the bottom for special instructions or comments. (Please see the attached sample letters.)
- *Request the return of all original or irreplaceable items.*
- State whether the requester may keep the recuts or if he or she should return them.
- Request a copy of any reports issued by the reviewing pathologist. If there is a serious disagreement between you and the reviewing pathologist, immediately inform your regional Claims office, and consider sending the case to an expert consultant for another opinion.

Place a copy of your cover letter in a tickler file, and devise a follow-up system to ensure that any materials you want back are in fact returned. *Maintaining such a system is well worth the effort if a claim should arise.*

Legally Motivated Requests

Requests for specimens for legal purposes may be a simple letter or a letter accompanied by a subpoena. Both types of requests should be accompanied by the patient's written authorization to release.

It is reasonable to confer with the attorney to ascertain the purpose of the request and to determine which specimens are actually needed. If it is possible to do so, follow the guidelines outlined previously for medically motivated requests—unless the attorney insists on the original slides.

If the laboratory specimen cannot be released in this manner, we recommend that you notify The Doctors Company. You can then inform the attorney that the requested materials cannot be recut or that only the original slides are on file. *State that the specimens will be made available for examination by a designated expert on laboratory premises under your supervision.* Only under a court order should originals or irreplaceable specimens be released. When in doubt, call The Doctors Company.

Subpoena in Cases Where a Formal Lawsuit or Claim Has Been Filed

Whether you or a clinician is named in a claim or lawsuit, *do not send any materials without The Doctors Company's concurrence.* We (or your assigned attorney, if you are named) will ascertain

PATIENT SAFETY/RISK MANAGEMENT STRATEGIES (continued)

whether recuts of blocks will suffice. If so—and if the plaintiff’s attorney agrees—recuts can be prepared and sent as outlined earlier.

If The Doctors Company or your attorney cannot accommodate a plaintiff’s attorney who insists on original slides, or if only the original slides are available (as, for example, with cytology slides), The Doctors Company or your attorney will file a motion in court to limit discovery and will argue for an examination of slides or other materials by the plaintiff’s expert on your premises and under your supervision.

In this scenario, two possibilities arise: 1) You receive a favorable decision from the court, and you need not send materials; slides and other materials will be examined on your premises; or 2) the court orders you to turn over the materials, and you must comply. In the latter instance, if original slides or other irreplaceable preparations are then broken or lost, you will operate under the court’s protection from charges of spoliation of evidence.

Even when the court orders the examination to take place on your premises, the plaintiff’s expert may want deeper cuts, more tissue submitted, or special studies performed. In any of these

instances, you may offer to prepare the additional materials and have them examined on your premises, but *only do so in consultation with The Doctors Company and your attorney* (if one has been assigned).

It is possible that the plaintiff’s lawyer may go back to court, demanding blocks of tissue so that the attorney’s expert can perform additional examinations. If that happens, your attorney will oppose the demand. Your subsequent course of action will depend on the second decision of the court. Again, if you are forced to turn over the materials, you will have the court’s protection in the event of damage or loss.

If the plaintiff’s attorney demands original slides, blocks, or other irreplaceable material during the interval between that demand and your attorney’s resistance to the demand, you should—in all histopathology cases—prepare recuts if there is sufficient residual tissue in the blocks to produce comparable slides.

Our current legal culture requires you to be aware that an apparently innocent request always has the potential to become a claim or lawsuit against you. Call The Doctors Company anytime questions arise regarding requests for pathology specimens.

By David B. Troxel, MD, Medical Director, Board of Governors.

Founded by doctors for doctors in 1976 to advance, protect, and reward the practice of good medicine, The Doctors Company is the nation’s largest insurer of physician and surgeon medical liability. For more information on our innovative patient safety products and services, please call (800) 421-2368, extension 1243, or visit us at www.thedoctors.com/patientsafety.

The guidelines suggested here are not rules, do not constitute legal advice, and do not ensure a successful outcome. The ultimate decision regarding the appropriateness of any treatment must be made by each health care provider in light of all circumstances prevailing in the individual situation and in accordance with the laws of the jurisdiction in which the care is rendered.

Sample Letter for Legally Motivated Requests

Date: _____

To Whom It May Concern:

We have recently received your request for a copy of our report(s), slides, blocks, wet stock, and/or other material pertaining to your client, _____ .
Note that we will need OR you have already submitted 1) written explanation of the purpose of this request AND 2) a properly executed release form.

We do not send original slides, blocks, or wet tissue, but may submit a copy of our report(s) and recut duplicates of the original slides to you. Pathologists normally send recut duplicates to colleagues when requesting a consultation and accept recuts when requesting slides for review. Please let us know if that will be satisfactory.

There is a total of ____ slide(s) on the case(s), to which we had assigned number(s) _____
_____ .

You may not want or need all of those slides and cases and, if you will telephone us, we can discuss your requirements, or you might focus your request based upon copies of our reports that you have in the patient's chart.

It is our policy to retain our original and irreplaceable material (including original slides, paraffin blocks, wet tissue, cytology, FNA slides, and hematological smears) on our premises to allow for possible review. We can make our original or irreplaceable materials available for inspection and review by a physician or other consultant of your choice, but only on our premises. The time and terms for such inspection must be agreed upon between the parties, and we will bill you for time, effort, expenses, and expertise.

Very truly yours,

Pathologist

Sample Letter for Medically Motivated Requests

DATE: _____

TO: _____

RE: _____

As requested in a release form signed by _____ and as a courtesy for the benefit of this patient, enclosed are the following:

_____ microscopic slide(s), specimen # _____

_____ paraffin block(s), specimen # _____

_____ copy of our pathology/cytology report(s)

Recuts, you may keep the slide(s)

Original slide(s), must be returned within thirty (30) days

As this material is legally part of our laboratory and departmental records, please do not send it to any other physician or hospital without first notifying our Pathology Department.

It would be most appreciated if you and your staff would assist us in our quality assurance program by sending us a copy of your written review of the enclosed slide(s).

Thank you,

Pathology Department