Who owns the tissue blocks and slides that are made from surgical specimens and cytological exams — the patient or the lab?

The “school solution” is that the physician who performed the procedure, the patient, and the institution all have proprietary interests in blocks and slides, just as they do in paper medical records. Sorting out the relative importance of these three competing interests can make for interesting, very fact-specific, situations. Some general principles apply.

In most cases, the institution (freestanding lab or hospital) is the designated custodian, and has responsibility to maintain the integrity of blocks and slides, ensure their physical security, maintain appropriate confidentiality, and assure access by others who have a property interest. State law dictates the overall form of this responsibility, including release procedures and parameters for when and how these items can be culled. Professional organizations like the College of American Pathologists and the Joint Commission on Accreditation of Health Care Organizations have guidelines that should be consulted — each slightly different, but reflecting the general requirements (i.e., tissue blocks and slides must be kept for a sufficient period of time, possibly specific, so that they are available for appropriate care of the patient). Enhanced opportunity for litigation causes some risk managers and professional organizations to view these statutory and professional time frames as lower-limit guidelines only.

Your institution should review its maintenance and storage policies regularly. Tissue should be retained for a sufficient period to allow re-examination in the case of a questioned diagnosis — generally, several weeks to several months, depending on the specimen, procedure, and diagnosis. Blocks and slides should be retained at least as long as the relevant statute of limitations in a civil lawsuit, and may vary, depending on the potential plaintiff. Material from (or relevant to) criminal cases should be retained until all appeals are exhausted — often many years. Material that relates to minor patients should be retained until the minor reaches majority and then for the period of the relevant statute of limitations.

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Roughly, keep regular blocks and slides from 10 to 20 years, placental and pediatric specimens for approximately 25 years, and material (not just slides from forensic exams) that might have bearing on criminal cases almost forever. The enormous storage and access problem prompts the need to review the material, and the retention and culling policies, on a regular basis (preferably with an attorney and pathologist) to guarantee that each reflects changes in relevant statutory requirements.

Access and release policies also need to be clear and workable. The institution is within its prerogatives to maintain physical possession of slides and blocks, in keeping with the universal legal requirement that institutions maintain comprehensive patient medical records. Often when a request is made for blocks or slides, re-cut sections (stained/unstained) will serve; originals are not needed. If original material is needed for diagnostic purposes, strong patient preference, or demanded by subpoena/court order, an institution should have a procedure for documenting the release of the material with appropriate consents or orders, as well as a receipt for the physical transfer of custody to any other party. If physical custody is transferred, it is wise to notify the patient, in writing, of this change, including the new custodian’s contact information, and to establish, in advance, when and how physical custody will be restored to the institution. It is then important to designate an individual to confirm that the agreement is kept — that the new custodian does not “forget” to return the material — and to document any transactions that occur in the attempt to track the transferred material.

It is equally wise to ensure that a policy is in place to document the eventual return of slides and blocks, including when, in what condition, and where they are subsequently stored for future access — something that is overlooked can be devastating if a dispute arises later about the physical condition/location of the material. Legal wrangling can result from cases in which slides or blocks have been “lost” between institutions, each claiming the other has possession, and neither being able to prove when and where transfer took place. Maintaining a “chain of custody” (as in legal evidence) can help prevent being responsible for loss of material. A little preventive attention to policy, procedure, and follow-through can help avoid such problems.