

**"CHAPTER 624
DEPOSITIONS AND DISCOVERY**

Section

624-1, 2 Repealed
624-11 to 19 Repealed

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Note

Chapter heading amended by L 1972, c 143, §1(k).

Rules of Court

See HRCP chapter V and rules 45(d) and 81(g); HRPP rules 15, 16; DCRCP chapter V and rule 45(d); RCC rule 16; RDC rule 16; Hawaii Family Court Rules, part A(V).

Law Journals and Reviews

Pre-Trial Discovery: Change in the Federal Rules. 7 HBJ, no. 2, at 48 (1970).

Electronic Discovery: A Call for a New Rules Regime for the Hawai'i Courts. 32 UH L. Rev. 153 (2009).

" **§§624-1, 624-2, and 624-11 to 624-19 REPEALED.** L 1972, c 143, §1(j).

"PART I. GENERAL PROVISIONS

Note

Part heading amended by L 1972, c 143, §1(l).

§§624-21 to 624-23 REPEALED. L 1972, c 143, §1(j).

" **§624-24 Arbitrators, etc.** [(a)] An arbitrator or other person, other than a court, having authority to hear, receive and examine evidence, may order that the deposition of a witness be taken within the State, or by leave of a circuit court outside the State, for use as evidence in a pending civil matter, when the circumstances are such that it is probable that the witness will not be able to, or will not be compellable to, attend and give evidence before such person at the hearing. Except as otherwise provided, the deposition shall be taken and may be used in the same manner as is provided by the rules of court relating to depositions in civil actions in circuit courts.

[(b)] Nothing herein contained limits or affects any other power heretofore or hereafter conferred with respect to the taking of depositions. [L 1972, c 143, §1(a)]

Rules of Court

See Hawaii Arbitration Rules.

" **§624-24.5 Compelling attendance of witness; commission for taking testimony.** (a) When the taking of a deposition is authorized by statute or rule of court, the attendance of the witness and the answering of questions may, except as otherwise provided, be compelled:

- (1) By any court when the action or proceeding is pending before it or the taking of the deposition has been ordered by it;
- (2) By the circuit court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another circuit court or an arbitrator or other person, other than a court;
- (3) By the district court of the circuit in which the deposition is being taken, when the action or proceeding is pending before, or the taking of the deposition has been ordered by, another district court.

(b) When the taking of a deposition outside the State is authorized by statute or rule of court and the issuance of a commission or letters rogatory is appropriate, the same may be issued by any court before which the action or proceeding is pending, or which has ordered or given leave for the taking of the deposition. [L 1972, c 143, §1(b)]

" **§624-25 Discovery.** A civil action in the nature of a bill for discovery may be brought according to the usages and principles of courts of equity, unless the matter is governed by the rules of court. [L 1972, c 143, §1(c)]

" **§624-25.5 Proceedings and records of peer review committees and quality assurance committees.** (a) As used in this section:

"Case review forum" means any meeting convened by the administrative or professional staff of a licensed hospital or clinic for the presentation and critique of cases for educational purposes.

"Health care review organization" means any organization that gathers and reviews information relating to the procedures and outcomes of health care providers and the care and treatment

of patients for the purposes of evaluating and improving quality and efficiency of health care.

"Licensed health maintenance organization" means a health maintenance organization licensed in Hawaii under chapter 432D.

"Peer review committee" means a committee created by a professional society, or by the medical, dental, optometric, or administrative staff of a licensed hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network, whose function is to maintain the professional standards of persons engaged in its profession, occupation, specialty, or practice established by the bylaws of the society, hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network of the persons engaged in its profession, occupation, or area of specialty practice, or in its hospital, clinic, health maintenance organization, preferred provider organization, or preferred provider network.

"Preferred provider organization" or "preferred provider network" means a partnership, association, corporation, or other entity that delivers or arranges for the delivery of health services, and that has entered into a written service arrangement or arrangements with health professionals, a majority of whom are licensed to practice medicine or osteopathy.

"Professional society" or "society" means any association or other organization of persons engaged in the same profession, occupation, or a specialty within a profession or occupation, a primary purpose of which is to maintain the professional standards of the persons engaged in its profession, occupation, or specialty practice.

"Quality assurance committee" means:

- (1) An interdisciplinary committee established by the board of trustees or administrative staff of a licensed hospital, clinic, long-term care facility, skilled nursing facility, assisted living facility, home care agency, hospice, health maintenance organization, preferred provider organization, preferred provider network providing medical, dental, or optometric care, or an authorized state agency whose function is to monitor and evaluate patient care to identify, study, and correct deficiencies in the health care delivery system, with a goal of reducing the risk of harm to patients, improving patient safety, or otherwise improving the quality of care delivered to patients; or
- (2) An interdisciplinary committee composed of representatives of organizations described in

paragraph (1) that is established collectively by the boards of trustees or administrative staff of these organizations, and whose function is to monitor and evaluate patient care to identify, study, and correct deficiencies in the health care delivery system, with a goal of reducing the risk of harm to patients, improving patient safety, or otherwise improving the quality of care delivered to patients.

(b) The department of health may establish quality assurance committees for the purpose of monitoring, improving, and evaluating patient care within the statewide trauma care systems. The proceedings of quality assurance committees authorized under this subsection shall not be subject to part I of chapter 92, and, for purposes of chapter 92F, the records of the proceedings shall be confidential.

(c) Neither the proceedings nor the records of peer review committees, quality assurance committees, or case review forums shall be subject to discovery. For the purposes of this section, "records of quality assurance committees" are limited to recordings, transcripts, minutes, summaries, and reports of committee meetings and conclusions contained therein. Information protected shall not include incident reports, occurrence reports, or similar reports that state facts concerning a specific situation, or records made in the regular course of business by a hospital or other provider of health care. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were presented to, or prepared at the direction of, the committees. Except as hereinafter provided, no person in attendance at a meeting of a committee or case review forum shall be required to testify as to what transpired at the meeting. The prohibition relating to discovery or testimony shall not apply to the statements made by any person in attendance at the meeting who is a party to an action or proceeding the subject matter of which was reviewed at the meeting, or to any person requesting hospital staff privileges, or in any action against an insurance carrier alleging bad faith by the carrier in refusing to accept a settlement offer within the policy limits.

(d) Information and data relating to a medical error reporting system that is compiled and submitted by a medical provider to a health care review organization for the purpose of evaluating and improving the quality and efficiency of health care, when done through a peer review committee or hospital quality assurance committee, shall not be subject to discovery.

For purposes of this subsection, the information and data protected shall include proceedings and records of a peer review

committee, hospital quality assurance committee, or health care review organization that include recordings, transcripts, minutes, and summaries of meetings, conversations, notes, materials, or reports created for, by, or at the direction of a peer review committee, quality assurance committee, or a health care review organization when related to a medical error reporting system.

Information and data protected from discovery shall not include incident reports, occurrence reports, statements, or similar reports that state facts concerning a specific situation and shall not include records made in the regular course of business by a hospital or other provider of health care, including patient medical records. Original sources of information, documents, or records shall not be construed as being immune from discovery or use in any civil proceeding merely because they were reviewed or considered by a medical provider for submission to, or were in fact submitted to, a health care review organization.

(e) The prohibitions contained in this section shall not apply to medical, dental, or optometric society committees that exceed ten per cent of the membership of the society, nor to any committee if any person serves upon the committee when the person's own conduct or practice is being reviewed.

(f) The prohibitions contained in this section shall apply to investigations and discovery conducted by the Hawaii medical board, except as required by section 92-17, 453-8.7, or 663-1.7(e). [L 1971, c 207, §1; ren L 1972, c 143, §1(d); am L 1973, c 169, §1; am L 1975, c 170, §1; am L 1982, c 227, §5; gen ch 1985; am L 1989, c 354, §5 and c 373, §1; am L 1997, c 279, §1; am L 2004, c 54, §2; am L 2005, c 115, §2; am L 2008, c 9, §3; am L 2010, c 133, §2; am L 2011, c 176, §2]

Cross References

Health care peer review, see chapter 671D.

"PART II. DEPOSITIONS FOR USE OUTSIDE THE STATE

Note

Part heading renumbered by L 1972, c 143, §1(m).

§624-26 REPEALED. L 1972, c 143, §1(j).

" **§624-27 Subpoena to witness.** Where a commission to take testimony within the State has been issued from a court without the State, or where a notice has been given or any other proceeding has been taken for the purpose of taking testimony within the State, pursuant to the laws or practice of the state or jurisdiction wherein the deposition is to be used for purposes of discovery or as evidence, including the United States if it is a federal proceeding, the circuit court, in a proper case, on the presentation of a verified petition shall order the issuance of a subpoena to any witness, commanding the witness to appear before the commissioner, officer or person named or designated in the commission, notice or other paper, at a time and place specified in the subpoena, to testify in the same manner as is provided by the rules of court relating to depositions for use in [the] State. If any witness fails to obey the subpoena, or refuses to testify, or to produce a book or paper pursuant to a subpoena or to subscribe the witness' deposition, the court issuing the subpoena, if it is determined that a contempt has been committed, may prescribe the punishment as in the case of a recalcitrant witness in a circuit court in the State, and may make such additional or other orders as would be proper if the deposition were for use in the State. [L 1951, c 199, §2; RL 1955, §223-21; HRS §624-27; am L 1972, c 143, §1(e); gen ch 1985]

" **§624-28 Taking and return of deposition.** The officer, commissioner, or person before whom a witness appears, in a case specified in section 624-27, shall take down the witness' testimony, in writing, and shall annex thereto copies of all books and papers produced or such parts thereof as shall be required, and shall certify and transmit it in accordance with the laws and practice of the state or other jurisdiction from which the commission, notice, or other paper emanated. [L 1951, c 199, §3; RL 1955, §223-22; HRS §624-28; am L 1972, c 143, §1(f); gen ch 1985]

" **§§624-31 to 624-34 REPEALED.** L 1972, c 143, §1(j).

"PART III. COSTS

Note

Part heading added by L 1972, c 143, §1(n).

§624-35 Costs. The costs of depositions may be taxed in the bill of costs as provided by section 607-9. [L 1876, c 32, §9; RL 1925, §2575; RL 1935, §3869; RL 1945, §9855; RL 1955, §223-5; HRS §624-35; am L 1972, c 143, §1(g)]

Case Notes

No abuse of discretion found in trial judge taxing cost against losing party. 9 H. 563 (1894).

Commissioner's fee is item of cost. 12 H. 83 (1899).

Attorney for losing party responsible for costs of commission. 19 H. 319 (1909).

Fees of foreign attorney taking deposition. 49 H. 311, 417 P.2d 636 (1966).

Costs recoverable where depositions necessarily obtained for use in the case. 5 H. App. 558, 705 P.2d 535 (1985).

Cited: 31 H. 242, 249 (1930).

"PART IV. PERPETUATION OF TESTIMONY

Note

Part heading renumbered by L 1972, c 143, §1(o).

§624-41 Action for. (a) A person who, before action, desires to perpetuate the person's own testimony or the testimony of any other person, may proceed in accordance with the rules of court or may bring a civil action in the circuit court of any circuit in which it is fair and equitable to the parties that the matter be heard, setting forth:

- (1) That the plaintiff expects to be a party to an action cognizable in a court of this State but is presently unable to bring it or cause it to be brought;
- (2) The subject matter of the expected action and the plaintiff's interest therein;
- (3) The facts that the plaintiff desires to establish by the proposed testimony and the plaintiff's reasons for desiring to perpetuate it;
- (4) The names of the persons the plaintiff expects will be adverse parties and their addresses; and
- (5) The names and addresses of the persons to be examined and the substance of the testimony that the plaintiff expects to elicit from each; and

praying for an order authorizing the plaintiff to take the depositions of the persons to be examined named in the action, for the purpose of perpetuating their testimony.

(b) Personal service shall be made on the expected adverse parties as in other civil actions. In case service cannot be made in the State, service may be made as provided by sections 634-24 and 634-25, but if an action is brought under this section, service shall not be made by publication. [L 1876, c 32, §27; RL 1925, §2590; RL 1935, §3884; RL 1945, §9870; RL 1955, §223-23; HRS §624-41; am L 1972, c 143, §1(h); am L 2016, c 55, §24]

Rules of Court

See HRCP rule 27.

" **§§624-42 to 624-44 REPEALED.** L 1972, c 143, §1(j).

" **§624-45 Costs.** The applicant or plaintiff shall pay all costs of all proceedings under section 624-41, but such disbursements ultimately may be allowed in taxation of costs as in the case of disbursements for depositions. [L 1876, c 32, §31; RL 1925, §2594; RL 1935, §3888; RL 1945, §9874; RL 1955, §223-27; HRS §624-45; am L 1972, c 143, §1(i)]