

ACT 139

S. B. NO. 769

A Bill for an Act Relating to Medical Records and Custodians thereof in Actions for Personal Injury.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 622, Hawaii Revised Statutes, is amended by adding thereto a new part to be appropriately numbered and to read as follows:

“PART . MEDICAL RECORDS

Sec. 622- Definitions. As used in this part:

- (1) ‘Medical records’ mean records of patients kept by a medical facility.
- (2) ‘Medical facility’ means a hospital operated by a public entity, a hospital licensed under chapter 321, the office of a medical group practice, a licensed physician’s office, or any other type of facility where medical records relating to the care or treatment of a patient are kept.

Sec. 622- Subpoena duces tecum for medical records, compliance.

- (a) Except as provided in section 622- , whenever a subpoena duces tecum

is served upon the custodian of medical records or other qualified witness from a medical facility, in an action for personal injuries in which the custodian or his employer is neither a party to the cause of action nor is it alleged that the cause of action had arisen at the medical facility, and such subpoena requires the production in court of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in section 622-3) of all the medical records described in such subpoena to the clerk of the court or his deputy authorized to issue it, together with the affidavit described in section 622-

(b) The copy of the medical records shall be separately enclosed in an inner envelope or wrapper, sealed, with the title and number of the action, name of the custodian or other qualified witness, and date of the subpoena clearly inscribed thereon; the sealed envelope or wrapper shall then be enclosed in an outer envelope or wrapper, sealed, and directed as follows:

- (1) If the subpoena directs attendance in court, to the clerk of such court or his deputy authorized to issue it.
- (2) In other cases, to the officer, board, commission, or tribunal conducting the hearing, at a like address.

(c) The copy of the medical records shall remain sealed and shall be opened only at the time of trial, or other hearing, upon the direction of the judge, officer, board, commission, or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at such trial, or hearing, unless the parties or counsel in the proceeding otherwise agree, or unless the sealed envelope or wrapper is returned to the custodian or other qualified witness who is to appear personally. Copies of medical record which are not introduced in evidence or required as part of the record shall be returned by registered or certified mail or by messenger to the person or entity from whom received. If the copies of the medical records are introduced in evidence or are required as part of the record, they shall be returned by registered or certified mail or messenger to the person or entity from whom received as soon as their use is no longer needed, after the trial, or other hearing.

Sec. 622- Affidavit accompanying medical records. (a) The medical records shall be accompanied by the affidavit of the custodian or other qualified witness, stating in substance each of the following:

- (1) That the affiant is the duly authorized custodian of the medical records and has authority to certify the medical records.
 - (2) That the copy is a true copy of all the medical records described in the subpoena.
 - (3) That the medical records were prepared by the personnel of the medical facility, staff physicians, or persons acting under the control of either, in the regular course of business at or near the time of the act, condition, or event.
- (b) The affidavit shall be notarized by a notary public, who may be the

custodian of the medical records; except where the custodian or his employer is a party to the cause of action or the medical facility is the place where the cause of action is alleged to have arisen and for which the subpoena duces tecum is being served.

(c) If none of the medical records described in the subpoena, or only a part thereof, are available the custodian shall so state in the affidavit, and deliver the affidavit and such medical records as are available in the manner provided in section 622-

Sec. 622- Admissibility of affidavit and copy of the medical records.

A copy of the medical records is admissible in evidence to the same extent as though the original thereof were offered and the custodian had been present and testified to the matters stated in the affidavit. The affidavit is admissible as competent evidence of the matters stated therein pursuant to section 622- and the matters so stated are presumed true and sufficient compliance with section 622-5, unless the side opposing the introduction requires the presence of the custodian or original records in accordance with Sec. 622- below. When more than one person has knowledge of the facts, more than one affidavit may be made. The presumption established above by this section is a presumption affecting the burden of producing evidence and may be rebutted by the side opposing the introduction of the evidence.

Sec. 622- Personal attendance of custodian; production of original medical records. The personal attendance of the custodian or other qualified witness, and the production of the original medical records shall be required if the subpoena duces tecum contains a clause which reads substantially as follows: "The personal attendance of the custodian or other qualified witness, and the production of the original medical records is required by this subpoena; the procedure authorized pursuant to Part , Chapter 622, Hawaii Revised Statutes, not being deemed sufficient under the circumstances in this matter."

Sec. 622- Fees; service of more than one subpoena. (a) All copies of medical records requested under this part shall be paid for by the person, board, commission, or tribunal requesting such records. The cost shall be based on the actual cost of preparation.

(b) This part shall not be deemed to require the tender of more than one witness or mileage fee required by section 621-3, unless there is an agreement to the contrary.

(c) If more than one subpoena duces tecum is served upon the custodian or other qualified witness from a medical facility and the personal attendance of that person is required pursuant to section 622- , the witness shall be deemed to be the witness of the party serving the first subpoena.

SECTION 2. This Act shall take effect upon its approval.

(Approved May 28, 1971.)