

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2072 Session of
1986

INTRODUCED BY BORTNER, YANDRISEVITS, BOWLEY, PRESSMANN, McHALE,
VEON AND STABACK, JANUARY 29, 1986

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,
SEPTEMBER 24, 1986

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 rules of evidence in relation to medical records; and <—
4 providing for the use of certified copies and procedures
5 relating thereto. TO MEDICAL RECORDS; PROVIDING FOR THE <—
6 LIABILITY OF DIRECTORS AND OFFICERS OF BUSINESS AND NONPROFIT
7 CORPORATIONS; AND MAKING REPEALS.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. ~~Chapter 61~~ CHAPTERS 61 AND 83 of Title 42 of the <—
11 Pennsylvania Consolidated Statutes ~~is~~ ARE amended by adding a <—
12 ~~subchapter~~ SUBCHAPTERS to read: <—

13 CHAPTER 61

14 RULES OF EVIDENCE

15 * * *

16 SUBCHAPTER E

17 MEDICAL RECORDS

18 Sec.

19 6151. Use of certified copies.

1 6152. Subpoena of records.

2 6153. Receipts.

3 6154. Affidavit of none or partial possession.

4 6155. Rights of patients.

5 6156. Opening of sealed envelopes.

6 6157. Retention of records.

7 6158. Obtaining personal attendance of custodian.

8 6159. Obtaining production of original record.

9 § 6151. Use of certified copies.

10 Medical charts or records of any health care facility
11 licensed under the laws of this Commonwealth that are
12 susceptible to photostatic reproduction may be proved as to
13 foundation, identity and authenticity without any preliminary
14 testimony, by use of legible and durable copies, certified in
15 the manner provided in this subchapter by the employee of the
16 health care facility charged with the responsibility of being
17 custodian of the originals thereof. These copies may be used in
18 any trial, hearing, deposition or other judicial or
19 administrative action or proceeding, whether civil or criminal,
20 in lieu of the original charts or records which, however, the
21 health care facility shall hold available during the pendency of
22 the action or proceeding for inspection and comparison by the
23 court, tribunal or hearing officer and by the parties and their
24 attorneys of record. This subchapter does not apply to an X-ray
25 film or any other portion of a medical record which is not
26 susceptible to photostatic reproduction.

27 § 6152. Subpoena of records.

28 (a) Election.--When a subpoena duces tecum is served upon an
29 employee of any health care facility licensed under the laws of
30 this Commonwealth, requiring the production of any medical

1 charts or records at any action or proceeding, it shall be
2 deemed a sufficient response to the subpoena if the health care
3 facility notifies the attorney for the party causing service of
4 the subpoena, within three days of receipt of the subpoena, of
5 the health care facility's election to proceed under this
6 subchapter and of the estimated actual and reasonable expenses
7 of reproducing the charts or records.

8 (b) Notice to other parties.--Upon this notification, the
9 attorney causing the service of the subpoena shall notify all
10 other attorneys of record or other parties, if they are not
11 represented by attorneys, of the health care facility's
12 election.

13 (c) Delivery of records.--Following this election, the
14 health care facility shall hold the originals available, and
15 upon payment of its estimated reproduction expenses by the party
16 causing service of the subpoena, or by any other party, shall
17 within ten days deliver, by certified mail, return receipt
18 requested, or by personal delivery, legible and durable copies,
19 certified by the health care facility of all medical charts or
20 records specified in the subpoena.

21 (d) Certification.--The certification shall be signed before
22 a notary public by the employee of the health care facility
23 charged with the responsibility of being custodian of the
24 records and shall include the full name of the patient, the
25 patient's medical record number, the number of pages in the
26 medical records and a legend substantially to the following
27 effect:

28 "The copies of records for which this certification is
29 made are true and complete reproductions of the original
30 or microfilmed medical records which are housed in (name

1 of health care facility). The original records were made
2 in the regular course of business at or near the time of
3 the matter recorded. This certification is given pursuant
4 to 42 Pa.C.S. Ch. 61 Subch. E (relating to medical
5 records) by the custodian of the records in lieu of his
6 personal appearance."

7 Copies shall be separately enclosed and sealed in an inner
8 envelope or wrapper bearing the legend "Copies of Medical
9 Records."

10 § 6153. Receipts.

11 When the copies of records are personally delivered a receipt
12 shall be presented to the person receiving the records for his
13 signature and shall be immediately signed and returned to the
14 person delivering the records. The receipt shall contain the
15 name of the health care facility, the full name of the patient,
16 the date the copies of records were received and the signature
17 of the person receiving the records. When the copies of the
18 records are sent via certified mail, pursuant to section 6152(d)
19 (relating to subpoena of records), the receipt used by the
20 postal authorities shall be sufficient to prove delivery and
21 receipt of the copies of records.

22 § 6154. Affidavit of none or partial possession.

23 If the health care facility has none of the charts or records
24 specified in the subpoena, or only a part thereof, the custodian
25 of the charts or records shall so state in a notarized affidavit
26 and, following notice and payment of expenses, shall hold
27 available the original charts or records which are in the health
28 care facility's custody and specified in the subpoena and shall
29 deliver the certified copies together with the affidavit.

30 § 6155. Rights of patients.

1 (a) Protective order.--Any patient whose medical charts or
2 records are copied and delivered pursuant to this subchapter,
3 any person acting on such patient's behalf and the health care
4 facility having custody of the charts or records shall have
5 standing to apply to the court or other body before which the
6 action or proceeding is pending for a protective order denying,
7 restricting or otherwise limiting access to and use of the
8 copies or original charts and records.

9 (b) Rights to records generally.--A patient shall have the
10 right of access to all of his medical charts and records and to
11 photocopy the same for his own use.

12 § 6156. Opening of sealed envelopes.

13 The copy of the records shall remain sealed and shall be
14 opened only at the time of trial, deposition or other hearing,
15 upon the direction of the judge, court, officer, attorney, body
16 or tribunal conducting the proceeding, in the presence of all
17 parties who have appeared in person or by counsel at the trial,
18 deposition or hearing. Before directing that the inner-envelope
19 or wrapper be opened, the judge, court, officer, attorney, body
20 or tribunal shall first ascertain that either:

21 (1) the records have been subpoenaed in accordance with
22 this subchapter; or

23 (2) the patient involved or someone authorized in his
24 behalf to do so for him has consented thereto.

25 § 6157. Retention of records.

26 When the copies of records are delivered to a party or his
27 attorney of record for use in a deposition, they shall, after
28 termination of the deposition, be delivered personally or by
29 certified mail to the clerk of the court or other body before
30 which the action or proceeding is pending, and it shall be the

1 responsibility of the party or attorney to transmit the receipt
2 obtained to the custodian of the original records. When the
3 records are received by the clerk of a court or other body from
4 a health care facility or from a party or his attorney of
5 record, they shall be retained in the clerk's custody at all
6 times except when actually used in the action or proceeding.
7 Upon issuance of a final order terminating a case, the copies of
8 the records will be promptly filed in a manner that protects the
9 confidentiality of the medical information contained in the
10 records by the clerk of the court with all other documents
11 pertaining to the case until such a time as the normal retention
12 period for court records expires. The copies of records shall
13 then be permanently disposed of by the clerk in a manner that
14 protects the confidentiality of the medical information
15 contained in the records. Should the case be appealed, the
16 copies of records shall be forwarded to the appellate court with
17 other documents pertaining to the case and retained and disposed
18 of in the manner described in this section.

19 § 6158. Obtaining personal attendance of custodian.

20 The personal attendance of the custodian of the original
21 charts or records specified in the subpoena shall be required if
22 the subpoena duces tecum so specifies.

23 § 6159. Obtaining production of original record.

24 The production of the original record shall be required if
25 the subpoena duces tecum so specifies.

26 ~~Section 2. This act shall take effect in 60 days.~~ <—

27 CHAPTER 83 <—

28 PARTICULAR RIGHTS AND IMMUNITIES

29 * * *

30 SUBCHAPTER F

CORPORATE DIRECTORS' AND OFFICERS' LIABILITY

SEC.

8361. SHORT TITLE OF SUBCHAPTER.

8362. DEFINITIONS OF SUBCHAPTER.

8363. STANDARD OF CARE AND JUSTIFIABLE RELIANCE.

8364. PERSONAL LIABILITY OF DIRECTORS AND OFFICERS.

8365. NON-EXCLUSIVITY AND SUPPLEMENTARY COVERAGE.

8366. CONSTRUCTION OF SUBCHAPTER.

8367. APPLICATION OF SUBCHAPTER.

§ 8361. SHORT TITLE OF SUBCHAPTER.

THIS SUBCHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE
DIRECTORS' AND OFFICERS' LIABILITY ACT.

§ 8362. DEFINITIONS OF SUBCHAPTER.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"BUSINESS CORPORATION." A CORPORATION SUBJECT TO THE ACT OF
MAY 5, 1933 (P.L.364, NO.106), KNOWN AS THE BUSINESS CORPORATION
LAW.

"NONPROFIT CORPORATION." A CORPORATION SUBJECT TO 15 PA.C.S.
PART III (RELATING TO CORPORATIONS NOT-FOR-PROFIT).

§ 8363. STANDARD OF CARE AND JUSTIFIABLE RELIANCE.

(A) DIRECTOR AS FIDUCIARY.--A DIRECTOR OF A BUSINESS
CORPORATION OR OF A NONPROFIT CORPORATION SHALL STAND IN A
FIDUCIARY RELATION TO THE CORPORATION AND SHALL PERFORM HIS
DUTIES AS A DIRECTOR, INCLUDING HIS DUTIES AS A MEMBER OF ANY
COMMITTEE OF THE BOARD UPON WHICH HE MAY SERVE, IN GOOD FAITH,
IN A MANNER HE REASONABLY BELIEVES TO BE IN THE BEST INTERESTS
OF THE CORPORATION, AND WITH SUCH CARE, INCLUDING REASONABLE
INQUIRY, SKILL AND DILIGENCE, AS A PERSON OF ORDINARY PRUDENCE

1 WOULD USE UNDER SIMILAR CIRCUMSTANCES. IN PERFORMING HIS DUTIES,
2 A DIRECTOR SHALL BE ENTITLED TO RELY IN GOOD FAITH ON
3 INFORMATION, OPINIONS, REPORTS OR STATEMENTS, INCLUDING
4 FINANCIAL STATEMENTS AND OTHER FINANCIAL DATA, IN EACH CASE
5 PREPARED OR PRESENTED BY ANY OF THE FOLLOWING:

6 (1) ONE OR MORE OFFICERS OR EMPLOYEES OF THE CORPORATION
7 WHOM THE DIRECTOR REASONABLY BELIEVES TO BE RELIABLE AND
8 COMPETENT IN THE MATTERS PRESENTED.

9 (2) COUNSEL, PUBLIC ACCOUNTANTS OR OTHER PERSONS AS TO
10 MATTERS WHICH THE DIRECTOR REASONABLY BELIEVES TO BE WITHIN
11 THE PROFESSIONAL OR EXPERT COMPETENCE OF SUCH PERSON.

12 (3) A COMMITTEE OF THE BOARD UPON WHICH HE DOES NOT
13 SERVE, DULY DESIGNATED IN ACCORDANCE WITH LAW, AS TO MATTERS
14 WITHIN ITS DESIGNATED AUTHORITY, WHICH COMMITTEE THE DIRECTOR
15 REASONABLY BELIEVES TO MERIT CONFIDENCE.

16 A DIRECTOR SHALL NOT BE CONSIDERED TO BE ACTING IN GOOD FAITH IF
17 HE HAS KNOWLEDGE CONCERNING THE MATTER IN QUESTION THAT WOULD
18 CAUSE HIS RELIANCE TO BE UNWARRANTED.

19 (B) PERFORMANCE OF DUTIES.--AN OFFICER OF A BUSINESS
20 CORPORATION OR OF A NONPROFIT CORPORATION SHALL STAND IN A
21 FIDUCIARY RELATION TO THE CORPORATION AND SHALL PERFORM HIS
22 DUTIES AS AN OFFICER IN GOOD FAITH, IN A MANNER HE REASONABLY
23 BELIEVES TO BE IN THE BEST INTERESTS OF THE CORPORATION, AND
24 WITH SUCH CARE, INCLUDING REASONABLE INQUIRY, SKILL AND
25 DILIGENCE, AS A PERSON OF ORDINARY PRUDENCE WOULD USE UNDER
26 SIMILAR CIRCUMSTANCES.

27 (C) CONSIDERATION OF FACTORS.--IN DISCHARGING THE DUTIES OF
28 THEIR RESPECTIVE POSITIONS, THE BOARD OF DIRECTORS, COMMITTEES
29 OF THE BOARD, INDIVIDUAL DIRECTORS AND INDIVIDUAL OFFICERS MAY,
30 IN CONSIDERING THE BEST INTERESTS OF THE CORPORATION, CONSIDER

1 THE EFFECTS OF ANY ACTION UPON EMPLOYEES, UPON SUPPLIERS AND
2 CUSTOMERS OF THE CORPORATION AND UPON COMMUNITIES IN WHICH
3 OFFICES OR OTHER ESTABLISHMENTS OF THE CORPORATION ARE LOCATED,
4 AND ALL OTHER PERTINENT FACTORS. THE CONSIDERATION OF THOSE
5 FACTORS SHALL NOT CONSTITUTE A VIOLATION OF SUBSECTION (A) OR
6 (B).

7 (D) PRESUMPTION.--ABSENT BREACH OF FIDUCIARY DUTY, LACK OF
8 GOOD FAITH OR SELF-DEALING, ACTIONS TAKEN AS A DIRECTOR OR
9 OFFICER OR ANY FAILURE TO TAKE ANY ACTION SHALL BE PRESUMED TO
10 BE IN THE BEST INTERESTS OF THE CORPORATION.

11 § 8364. PERSONAL LIABILITY OF DIRECTORS AND OFFICERS.

12 UNLESS GREATER LIABILITY IS SET FORTH IN THE BYLAWS OF A
13 CORPORATION, A DIRECTOR OR OFFICER OF A BUSINESS CORPORATION OR
14 OF A NONPROFIT CORPORATION SHALL NOT BE PERSONALLY LIABLE AS
15 SUCH FOR ANY ACTION TAKEN, OR ANY FAILURE TO TAKE ANY ACTION,
16 UNLESS:

17 (1) THE DIRECTOR OR OFFICER HAS BREACHED OR FAILED TO
18 PERFORM THE DUTIES OF HIS OFFICE UNDER SECTION 8363 (RELATING
19 TO STANDARD OF CARE AND JUSTIFIABLE RELIANCE); AND

20 (2) THE BREACH OR FAILURE TO PERFORM CONSTITUTES WILLFUL
21 MISCONDUCT OR RECKLESSNESS.

22 § 8365. NON-EXCLUSIVITY AND SUPPLEMENTARY COVERAGE.

23 (A) GENERAL RULE.--THE INDEMNIFICATION AND ADVANCEMENT OF
24 EXPENSES PROVIDED BY OR PURSUANT TO SECTION 410 OF THE ACT OF
25 MAY 5, 1933 (P.L.364, NO.106), KNOWN AS THE BUSINESS CORPORATION
26 LAW, SECTION 4 OF THE ACT OF APRIL 18, 1945 (P.L.253, NO.114),
27 ENTITLED "AN ACT RELATING TO SUITS BY SHAREHOLDERS AGAINST
28 OFFICERS OR DIRECTORS IN A CORPORATION, DOMESTIC OR FOREIGN, TO
29 ENFORCE A SECONDARY RIGHT BECAUSE THE CORPORATION REFUSES TO
30 ENFORCE RIGHTS, WHICH MAY BE ASSERTED BY IT, REQUIRING THAT

1 PLAINTIFF BE A SHAREHOLDER AT THE TIME OF THE TRANSACTION OF
2 WHICH HE COMPLAINS, OR THAT HIS SHARES THEREAFTER DEVOLVED UPON
3 HIM BY OPERATION OF LAW; REQUIRING SECURITY FOR DEFENDANT'S
4 EXPENSES, INCLUDING ATTORNEYS' FEES; AND PROVIDING FOR THE
5 ASSESSMENT AND RECOVERY OF SUCH EXPENSES, INCLUDING ATTORNEYS'
6 FEES," AND 15 PA.C.S. §§ 7741 (RELATING TO THIRD PARTY ACTIONS),
7 7742 (RELATING TO DERIVATIVE ACTIONS) AND 7743 (RELATING TO
8 MANDATORY INDEMNIFICATION), OR ANY OTHER PROVISIONS OF LAW
9 PROVIDING FOR INDEMNIFICATION OR ADVANCEMENT OF EXPENSES
10 APPLICABLE TO ANY BUSINESS CORPORATION OR NONPROFIT CORPORATION
11 SHALL NOT BE DEEMED EXCLUSIVE OF ANY OTHER RIGHTS TO WHICH A
12 PERSON SEEKING INDEMNIFICATION OR ADVANCEMENT OF EXPENSES MAY BE
13 ENTITLED UNDER ANY BYLAW, AGREEMENT, VOTE OF SHAREHOLDERS,
14 MEMBERS OR DIRECTORS OR OTHERWISE, BOTH AS TO ACTION IN HIS
15 OFFICIAL CAPACITY AND AS TO ACTION IN ANOTHER CAPACITY WHILE
16 HOLDING THAT OFFICE. THE PROVISIONS OF SECTION 409.1 OF THE
17 BUSINESS CORPORATION LAW AND 15 PA.C.S. § 7728 (RELATING TO
18 INTERESTED DIRECTORS; QUORUM) OR CORRESPONDING PROVISIONS OF LAW
19 APPLICABLE TO ANY BUSINESS CORPORATION OR NONPROFIT CORPORATION
20 SHALL BE APPLICABLE TO ANY BYLAW, CONTRACT OR TRANSACTION
21 AUTHORIZED BY THE DIRECTORS UNDER THIS SECTION. ANY BUSINESS
22 CORPORATION OR NONPROFIT CORPORATION MAY CREATE A FUND OF ANY
23 NATURE, WHICH MAY, BUT NEED NOT BE, UNDER THE CONTROL OF A
24 TRUSTEE, OR OTHERWISE SECURE OR INSURE IN ANY MANNER ITS
25 INDEMNIFICATION OBLIGATIONS, WHETHER ARISING UNDER OR PURSUANT
26 TO THIS SECTION OR OTHERWISE.

27 (B) WHEN INDEMNIFICATION IS NOT TO BE MADE.--INDEMNIFICATION
28 PURSUANT TO SUBSECTION (A) SHALL NOT BE MADE IN ANY CASE WHERE
29 THE ACT OR FAILURE TO ACT GIVING RISE TO THE CLAIM FOR
30 INDEMNIFICATION IS DETERMINED BY A COURT TO HAVE CONSTITUTED

1 WILLFUL MISCONDUCT OR RECKLESSNESS.

2 (C) GROUNDS.--INDEMNIFICATION PURSUANT TO SUBSECTION (A)
3 UNDER ANY BYLAW, AGREEMENT, VOTE OF SHAREHOLDERS, MEMBERS OR
4 DIRECTORS OR OTHERWISE, MAY BE GRANTED FOR ANY ACTION TAKEN OR
5 ANY FAILURE TO TAKE ANY ACTION AND MAY BE MADE WHETHER OR NOT
6 THE CORPORATION WOULD HAVE THE POWER TO INDEMNIFY THE PERSON
7 UNDER ANY OTHER PROVISION OF LAW EXCEPT AS PROVIDED IN THIS
8 SECTION AND WHETHER OR NOT THE INDEMNIFIED LIABILITY ARISES OR
9 AROSE FROM ANY THREATENED, PENDING OR COMPLETED ACTION BY OR IN
10 THE RIGHT OF THE CORPORATION. SUCH INDEMNIFICATION IS DECLARED
11 TO BE CONSISTENT WITH THE PUBLIC POLICY OF THIS COMMONWEALTH.

12 (D) PAYMENT OF EXPENSES.--EXPENSES INCURRED BY AN OFFICER,
13 DIRECTOR, EMPLOYEE OR AGENT IN DEFENDING A CIVIL OR CRIMINAL
14 ACTION, SUIT OR PROCEEDING MAY BE PAID BY THE CORPORATION IN
15 ADVANCE OF THE FINAL DISPOSITION OF SUCH ACTION, SUIT OR
16 PROCEEDING UPON RECEIPT OF AN UNDERTAKING BY OR ON BEHALF OF
17 SUCH PERSON TO REPAY SUCH AMOUNT IF IT SHALL ULTIMATELY BE
18 DETERMINED THAT HE IS NOT ENTITLED TO BE INDEMNIFIED BY THE
19 CORPORATION.

20 (E) RIGHTS TO INDEMNIFICATION.--THE INDEMNIFICATION AND
21 ADVANCEMENT OF EXPENSES PROVIDED BY, OR GRANTED PURSUANT TO,
22 THIS SECTION SHALL, UNLESS OTHERWISE PROVIDED WHEN AUTHORIZED OR
23 RATIFIED, CONTINUE AS TO A PERSON WHO HAS CEASED TO BE A
24 DIRECTOR, OFFICER, EMPLOYEE OR AGENT AND SHALL INURE TO THE
25 BENEFIT OF THE HEIRS, EXECUTORS AND ADMINISTRATORS OF SUCH
26 PERSON.

27 § 8366. CONSTRUCTION OF SUBCHAPTER.

28 THIS SUBCHAPTER SHALL NOT BE CONSTRUED TO REPEAL OR OTHERWISE
29 AFFECT OR IMPAIR SECTION 409.1 OF THE ACT OF MAY 5, 1933

30 (P.L.364, NO.106), KNOWN AS THE BUSINESS CORPORATION LAW, OR

1 SECTION 8332.2 (RELATING TO OFFICER, DIRECTOR OR TRUSTEE OF
2 NONPROFIT ORGANIZATION NEGLIGENCE STANDARD).

3 § 8367. APPLICATION OF SUBCHAPTER.

4 THIS SUBCHAPTER SHALL NOT APPLY TO ANY ACTIONS FILED PRIOR TO
5 THE EFFECTIVE DATE OF THIS SUBCHAPTER.

6 SECTION 2. (A) THE FOLLOWING ACTS AND PARTS OF ACTS ARE
7 REPEALED:

8 SECTION 408 AND SUBSECTION E OF SECTION 410 OF THE ACT OF MAY
9 5, 1933 (P.L.364, NO.106), KNOWN AS THE BUSINESS CORPORATION
10 LAW.

11 15 PA.C.S. § 7734 (RELATING TO RELATION OF DIRECTORS AND
12 OFFICERS TO CORPORATION).

13 (B) ALL OTHER ACTS AND PARTS OF ACTS ARE REPEALED INsofar AS
14 THEY ARE INCONSISTENT WITH THIS ACT.

15 SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.