CHAPTER 115

Physicians’ Patient Records Act

**SECTION 44‑115‑10.** Short title.

 This chapter may be cited as the Physicians’ Patient Records Act.

HISTORY: 1992 Act No. 480, Section 1.

CROSS REFERENCES

Professional standards for patient records, see S.C. Code of Regulations R. 95‑6.

Attorney General’s Opinions

The Physicians’ Patient Records Act applies only to physicians and not to hospitals or other medical providers. S.C. Op.Atty.Gen. (November 16, 1993) 1993 WL 524234.

**SECTION 44‑115‑15.** Medical records defined.

 For purposes of this chapter, “medical records” includes the patient’s medical bills.

HISTORY: 2014 Act No. 294 (H.4354), Section 4, eff June 23, 2014.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑20.** Physician is owner of certain patient records.

 The physician is the owner of medical records in his possession that were made in treating a patient and of records transferred to him concerning prior treatment of the patient.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

RESEARCH REFERENCES

Encyclopedias

121 Am. Jur. Trials 513, Litigating Truck Accident Cases.

NOTES OF DECISIONS

In general 1

1. In general

Under South Carolina law, laser eye surgeons had legal right to possess patient’s medical records, and thus patient did not suffer injury to his business or property as result of retention of his medical records, as required to establish claim under Racketeer Influenced and Corrupt Organizations Act (RICO) based on purported conversion of records. Dickerson v. TLC The Laser Eye Center Institute, Inc. (C.A.4 (S.C.) 2012) 493 Fed.Appx. 390, 2012 WL 3329679, Unreported. Racketeer Influenced and Corrupt Organizations 59

**SECTION 44‑115‑30.** Patient’s right to receive copy of medical record or have it transferred to another physician; written authorization required.

 A patient or his legal representative has a right to receive a copy of his medical record, or have the record transferred to another physician, upon request, when accompanied by a written authorization from the patient or his legal representative to release the record. The patient or his legal representative is entitled to receive a copy of the record either in a printed format or an electronic format but only if the record is stored in an electronic format at the time of the request and the physician or other owner of the record has the ability to produce the medical record in an electronic format without incurring additional cost.

HISTORY: 1992 Act No. 480, Section 1; 2014 Act No. 294 (H.4354), Section 2, eff June 23, 2014.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑40.** Physician not to release records without express written consent.

 Except as otherwise provided by law, a physician shall not honor a request for the release of copies of medical records without the receipt of express written consent of the patient or person authorized by law to act on behalf of the patient.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

RESEARCH REFERENCES

Encyclopedias

87 Am. Jur. Proof of Facts 3d 259, Confidentiality of Medical and Other Treatment Records.

LAW REVIEW AND JOURNAL COMMENTARIES

Physician’s liability for breach of confidentiality: Beyond the limitations of the privacy tort. 49 S.C. L. Rev. 1271 (Summer 1998).

**SECTION 44‑115‑50.** Physician may rely on representations of insurance carrier or administrator as to patient authorization to release records; immunity from liability and disciplinary action.

 A physician may rely on the representations of a health and life insurance carrier or administrator of health and life insurance claims that the authorization of the patient or of a person upon whose status the patient’s claim depends for release of the medical record is on file with the carrier as an authorization to release medical information under this chapter. A physician who in good faith releases medical information for claims processing relying on the representations of the claims administrator that an authorization for release of the information is on file is immune from any civil or criminal liability alleged to be caused by the physician’s compliance with the request to release the information. The physician is not subject to disciplinary action for an alleged violation of law or regulation due to the compliance with the request to release information.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑60.** Physician’s release of summary or portion in lieu of full record.

 Except as otherwise provided by law, a physician may refuse to release a copy of the entire medical record and may furnish instead a summary or portion of the record when he has a reasonable belief that release of the information contained in the entire record would cause harm to the patient’s emotional or physical well‑being, the emotional or physical well‑being of another person who has given information about the patient to the physician, or where release of the information is otherwise prohibited by law. An unreasonable refusal to release the entire medical record constitutes unprofessional conduct and subjects the physician to disciplinary action of the South Carolina State Board of Medical Examiners.

 However, notwithstanding the provisions of this section, a physician may not refuse to release the entire record or a portion of the record if the information is requested by a licensed attorney representing the patient, when the request is accompanied by a written authorization signed by the patient, the patient’s legal guardian, or the patient’s personal representative, for any reason, a licensed attorney representing the patient, or by an insurance company with reference to an application for life or health insurance or the payment and adjudication of claims relating to life and health insurance or if the information is requested with reference to the payment or adjudication of personal injury claims.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑70.** Records not to be withheld because of unpaid medical bills.

 Medical records may not be withheld because of an unpaid bill for medical services.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑80.** Fees physician may charge for search and duplication of records.

 (A) A physician, or other owner of medical records as provided for in Section 44‑115‑130, may charge a fee for the search and duplication of a paper or electronic medical record, but the fee may not exceed:

 (1) Sixty‑five cents per page for the first thirty pages provided in an electronic format and fifty cents per page for all other pages provided in an electronic format, plus a clerical fee not to exceed twenty‑five dollars for searching and handling, which combined with the per page costs may not exceed one hundred fifty dollars per request, but to which may be added actual postage and applicable sales tax. The search and handling fee is permitted even though no medical record is found as a result of the search, except where the request is made by the patient.

 (2) Sixty‑five cents per page for the first thirty printed pages and fifty cents per page for all other printed pages, plus a clerical fee not to exceed twenty‑five dollars for searching and handling, which combined with the per page print costs may not exceed two hundred dollars per request, and to which may be added actual postage and applicable sales tax. The search and handling fee is permitted even though no medical record is found as a result of the search, except where the request is made by the patient.

 (3) All fees allowed by this section, including the maximum, must be adjusted annually in accordance with the Consumer Price Index for all Urban Consumers, South Region (CPI‑U), published by the U.S. Department of Labor. The Department of Health and Environmental Control is responsible for calculating this annual adjustment, which is effective on July first of each year, starting July 1, 2015.

 (B) A physician, health care provider, or other owner of medical records must provide a patient’s medical records at no charge when the patient is referred by the physician, health care provider, or an employee, agent, or contractor of the owner of the record to another physician or health care provider for continuation of treatment for a specific condition or conditions.

 (C) The physician may charge a patient or the patient’s legal representative no more than the actual cost of reproduction of an X‑ray. Actual cost means the cost of materials and supplies used to duplicate the X‑ray and the labor and overhead costs associated with the duplication.

HISTORY: 1992 Act No. 480, Section 1; 1994 Act No. 468, Section 6; 1999 Act No. 85, Section 3; 2014 Act No. 294 (H.4354), Section 3, eff June 23, 2014.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑90.** Fees for providing medical information other than copying existing documents.

 When a request for medical information involves more than making copies of existing documents, a physician may charge reasonable fees, exclusive of those fees charged for copying the medical record, for providing this service.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑100.** Sections 44‑115‑80 and 44‑115‑90 not applicable to requests for information made in relation to health insurance claims.

 The provisions of Sections 44‑115‑80 and 44‑115‑90 do not apply to requests for medical information necessary to process a health insurance claim made by a patient or on behalf of the patient by a health insurance carrier or health insurance administrator for services rendered by the physician from whom the information is requested.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑110.** Payment for services related to medical records a just debt; payment in advance may be required.

 Payment for all services related to medical record requests is a just debt, due and payable at the time service is rendered. A physician may require payment in advance for a copy of the record.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑120.** Length of time records must be kept; records pertaining to minors.

 Physicians shall retain their records for at least ten years for adult patients and at least thirteen years for minors. These minimum recordkeeping periods begin to run from the last date of treatment. After these minimum recordkeeping periods, the records may be destroyed.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑130.** Sale of medical records by physician restricted; notice of intent to sell.

 A physician may not sell medical records to someone other than a physician or osteopath licensed by the South Carolina State Board of Medical Examiners or a hospital licensed by the South Carolina Department of Health and Environmental Control. Exceptions to this prohibition may be granted and approved by the South Carolina State Board of Medical Examiners.

 Before a physician may sell medical records, he must cause to be published a public notice of his intention to sell the records in a newspaper of general circulation in the area of his practice at least three times in the ninety days preceding the sale. The notice shall advise patients that they may retrieve their records if they prefer that their records not be included in the sale.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

Attorney General’s Opinions

Absent amendment of notice statutes requiring notice in a newspaper of general circulation by the General Assembly, the term newspaper of general circulation cannot be extended to include online newspapers. S.C. Op.Atty.Gen. (October 21, 2015) 2015 WL 6745997.

**SECTION 44‑115‑140.** Immunity from civil, criminal, and disciplinary liability for compliance with request to release information.

 A physician who in good faith releases medical records to a party pursuant to a written authorization from the patient or the patient’s representative is immune from civil or criminal liability alleged to be caused by the physician’s compliance with the request to release the information. The physician is not subject to disciplinary action for an alleged violation of law due to compliance with the request to release information.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

LAW REVIEW AND JOURNAL COMMENTARIES

Physician’s liability for breach of confidentiality: Beyond the limitations of the privacy tort. 49 S.C. L. Rev. 1271 (Summer 1998).

**SECTION 44‑115‑150.** Other provisions pertaining to medical records or actions involving medical negligence not invalidated by this chapter.

 This chapter does not invalidate any other provision of law concerning medical records, the alteration of medical records, any interest a patient has in the information contained within the medical record, or any civil action brought in the state or federal courts alleging medical negligence; further, this chapter does not invalidate the authority of a court to issue a subpoena or of a licensing or disciplinary board of this State to obtain these records as provided by law.

HISTORY: 1992 Act No. 480, Section 1.

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

**SECTION 44‑115‑160.** Mammogram report requirements.

 A mammography report must be provided to a patient by the mammogram provider, and this report must include information about breast density based on the requirements of the Breast Imaging Reporting and Data System established by the American College of Radiology. Where applicable, this report must include:

 (1) a notice in conspicuous language which states: “Your mammogram shows that your breast tissue is dense. Dense tissue is common and is not abnormal. However, dense breast tissue can make it harder to evaluate the results of your mammogram and also may be associated with an increased risk of breast cancer. This information about the results of your mammogram is given to you to raise your awareness and to inform your conversations with your doctor. Together, you can decide which screening options are right for you. A report of your results was sent to your physician.”; and

 (2) consumer or patient information available from the American College of Radiology about breast density and mammogram reports.

HISTORY: 2016 Act No. 168 (S.339), Section 2, eff May 12, 2016.

Editor’s Note

2016 Act No. 168, Section 1, provides as follows:

“SECTION 1. This act is entitled ‘Hope’s Law’.”

Library References

Health 196.

Westlaw Topic No. 198H.

C.J.S. Physicians, Surgeons, and Other Health‑Care Providers Sections 71, 77.

RESEARCH REFERENCES

Encyclopedias

S.C. Jur. Public Health Section 111, State Council on Maternal, Infant, and Child Health.