

RESOLUTION 09-05-2017 (AS AMENDED)

DIGEST

Pre-Litigation Record Requests: Including Paramedic and Ambulance Service Providers

Amends Evidence Code section 1158 to add paramedic and ambulance service providers as “medical providers” obliged to make patient records available for inspection and copying upon signed patient authorization prior to filing a lawsuit.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Evidence Code section 1158 to add paramedic and ambulance service providers as “medical providers” obliged to make patient records available for inspection and copying upon signed patient authorization prior to filing a lawsuit. This resolution should be approved in principle because it is reasonable to allow a patient access to the records of providers of their medical services, whose records may assist in the evaluation of pertinent facts in contemplation of a possible lawsuit.

Evidence Code section 1158 provides that medical providers are required to make their records available for copying or inspection prior to filing a lawsuit upon receipt of a signed written request from the patient or patient’s representative. Paramedic and ambulance service providers are not included in the definition of “medical provider.” (Evid. Code, §1158, subd. (a).) When these medical professionals are privy to facts regarding the patient’s medical treatment and involved in the care of a patient, their records can assist a patient or their representative in assessing the pros and cons of commencing a lawsuit. Therefore, it is reasonable to include paramedic and ambulance service providers among the other medical provider who must comply with an Evidence Code section 1158 pre-litigation patient request for records. Paramedic and ambulance service providers are required to maintain patient records, but because not every paramedic or ambulance encounter results in transport to a medical facility, if patients cannot get the paramedic’s records, then the patient’s medical records would be incomplete. The patient should be able to have ready access to them, particularly if those records are relevant to a care issue or probative of facts at issue in a potential litigation. The burden on these providers for complying with the reasonable requirements of Evidence Code section 1158—promptly producing records upon a patient’s written request prior to filing suit—is minimal, and it may even avert litigation.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Evidence Code section 1158 to read as follows:

1 § 1158

2 (a) For purposes of this section, “medical provider” means physician and surgeon,
3 dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed
4 psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst,
5 clinical laboratory technologist, paramedic, ambulance or ambulance service or ambulance
6 company, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a
7 licensed hospital.

8 (b) Before the filing of any action or the appearance of a defendant in an action, if an
9 attorney at law or his or her representative presents a written authorization therefor signed by an
10 adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a
11 minor, by a parent or guardian of the minor, or by the personal representative or an heir of a
12 deceased patient, or a copy thereof, to a medical provider, the medical provider shall promptly
13 make all of the patient’s records under the medical provider’s custody or control available for
14 inspection and copying by the attorney at law or his or her representative.

15 (c) Copying of medical records shall not be performed by a medical provider, or by an
16 agent thereof, when the requesting attorney has employed a professional photocopier or anyone
17 identified in Section 22451 of the Business and Professions Code as his or her representative to
18 obtain or review the records on his or her behalf. The presentation of the authorization by the
19 agent on behalf of the attorney shall be sufficient proof that the agent is the attorney’s
20 representative.

21 (d) Failure to make the records available during business hours, within five days after the
22 presentation of the written authorization, may subject the medical provider having custody or
23 control of the records to liability for all reasonable expenses, including attorney’s fees, incurred
24 in any proceeding to enforce this section.

25 (e) (1) All reasonable costs incurred by a medical provider in making patient records
26 available pursuant to this section may be charged against the attorney who requested the records.

27 (2) “Reasonable cost,” as used in this section, shall include, but not be limited to, the
28 following specific costs: ten cents (\$0.10) per page for standard reproduction of documents of a
29 size 8 1/2 by 14 inches or less; twenty cents (\$0.20) per page for copying of documents from
30 microfilm; actual costs for the reproduction of oversize documents or the reproduction of
31 documents requiring special processing which are made in response to an authorization;
32 reasonable clerical costs incurred in locating and making the records available to be billed at the
33 maximum rate of sixteen dollars (\$16) per hour per person, computed on the basis of four dollars
34 (\$4) per quarter hour or fraction thereof; actual postage charges; and actual costs, if any, charged
35 to the witness by a third person for the retrieval and return of records held by that third person.

36 (f) If the records are delivered to the attorney or the attorney’s representative for
37 inspection or photocopying at the record custodian’s place of business, the only fee for
38 complying with the authorization shall not exceed fifteen dollars (\$15), plus actual costs, if any,
39 charged to the record custodian by a third person for retrieval and return of records held offsite
40 by the third person.

41 (g) If the records requested pursuant to subdivision (b) are maintained electronically and

42 if the requesting party requests an electronic copy of such information, the medical provider shall
43 provide the requested medical records in the electronic form and format requested by the
44 requesting party, if it is readily producible in such form and format, or, if not, in a readable form
45 and format as agreed to by the medical provider and the requesting party.

46 (h) A medical provider shall accept a signed and completed authorization form for the
47 disclosure of health information if both of the following conditions are satisfied:

48 (1) The medical provider determines that the form is valid.

49 (2) The form is printed in a typeface no smaller than 14-point type and is in substantially
50 the following form:

AUTHORIZATION FOR DISCLOSURE OF HEALTH INFORMATION PURSUANT TO
EVIDENCE CODE SECTION 1158

The undersigned authorizes the medical provider designated below to disclose specified
medical records to a designated recipient. The medical provider shall not condition treatment,
payment, enrollment, or eligibility for benefits on the submission of this authorization.

Medical provider: _____

Patient name: _____

Medical record number: _____

Date of birth: _____

Address: _____

Telephone number: _____

Email: _____

Recipient name: _____

Recipient address: _____

Recipient telephone number: _____

Recipient email: _____

Health information requested (check all that apply):

___ Records dated from _____ to _____.

___ Radiology records: _____ images or films _____ reports _____ digital/CD, if
available.

___ Laboratory results dated.

___ Laboratory results regarding specific test(s) only (specify) _____.

___ All records.

___ Records related to a specific injury, treatment, or other purpose (specify):

_____.

Note: records may include information related to mental health, alcohol or drug use, and HIV or AIDS. However, treatment records from mental health and alcohol or drug departments and results of HIV tests will not be disclosed unless specifically requested (check all that apply):

Mental health records.

Alcohol or drug records.

HIV test results.

Method of delivery of requested records:

Mail

Pick up

Electronic delivery, recipient email: _____

This authorization is effective for one year from the date of the signature unless a different date is specified here: _____.

This authorization may be revoked upon written request, but any revocation will not apply to information disclosed before receipt of the written request.

A copy of this authorization is as valid as the original. The undersigned has the right to receive a copy of this authorization.

Notice: Once the requested health information is disclosed, any disclosure of the information by the recipient may no longer be protected under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Patient signature*: _____

Date: _____

Print name: _____

*If not signed by the patient, please indicate relationship to the patient (check one, if applicable):

Parent or guardian of minor patient who could not have consented to health care.

Guardian or conservator of an incompetent patient.

Beneficiary or personal representative of deceased patient.

PROPONENT: Bar Association of Northern San Diego County

STATEMENT OF REASONS

The Problem: Evidence Code Section 1158 currently does not list paramedic and ambulance service providers as “medical providers” that must comply with a patient’s attorney’s pre-litigation request for copies of treatment records.

The Solution: This resolution would amend Evidence Code Section 1158 to include paramedic and ambulance service providers as “medical providers” that must comply with a patient’s attorney’s pre-litigation request for copies of treatment records.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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