

DEERING'S CALIFORNIA CODES ANNOTATED  
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THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 7 AND CH. 765 OF THE 2008  
REGULAR SESSION APPROVED 11/14/08, AND PROPOSITION 99 APPROVED BY VOTERS  
6/3/08

EVIDENCE CODE

Division 9. Evidence Affected or Excluded by Extrinsic Policies  
Chapter 3. Other Evidence Affected or Excluded by Extrinsic Policies

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Evid Code § 1158 (2007)

§ 1158. Inspection and copying of records upon patient's written authorization

Whenever, prior to the filing of any action or the appearance of a defendant in an action, an attorney at law or his or her representative presents a written authorization therefor signed by an adult patient, by the guardian or conservator of his or her person or estate, or, in the case of a minor, by a parent or guardian of the minor, or by the personal representative or an heir of a deceased patient, or a copy thereof, a physician and surgeon, dentist, registered nurse, dispensing optician, registered physical therapist, podiatrist, licensed psychologist, osteopathic physician and surgeon, chiropractor, clinical laboratory bioanalyst, clinical laboratory technologist, or pharmacist or pharmacy, duly licensed as such under the laws of the state, or a licensed hospital, shall make all of the patient's records under his, hers or its custody or control available for inspection and copying by the attorney at law or his, or her, representative, promptly upon the presentation of the written authorization.

No copying may be performed by any medical provider or employer enumerated above, or by an agent thereof, when the requesting attorney has employed a professional photocopier or anyone identified in *Section 22451 of the Business and Professions Code* as his or her representative to obtain or review the records on his or her behalf. The presentation of the authorization by the agent on behalf of the attorney shall be sufficient proof that the agent is the attorney's representative.

Failure to make the records available, during business hours, within five days after the presentation of the written authorization, may subject the person or entity having custody or control of the records to liability for all reasonable expenses, including attorney's fees, incurred in any proceeding to enforce this section.

All reasonable costs incurred by any person or entity enumerated above in making patient records available pursuant to this section may be charged

against the person whose written authorization required the availability of the records.

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

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

#### HISTORY:

Added Stats 1968 ch 1122 § 2. Amended Stats 1970 ch 556 § 1; Stats 1974 ch 250 § 1, ch 667 § 1; Stats 1975 ch 563 § 1; Stats 1978 ch 493 § 1; Stats 1980 ch 697 § 1; Stats 1986 ch 603 § 5; Stats 1987 ch 19 § 1, effective May 12, 1987; Stats 1993 ch 226 § 9 (AB 1987); Stats 1997 ch 442 § 15 (AB 758).

#### NOTES:

#### Amendments:

##### 1970 Amendment:

(1) Substituted "the" for "said" before "patient's records" and "written authorization" in the first paragraph; and (2) added the last paragraph.

##### 1974 Amendment:

Amended the first paragraph by (1) adding "the" before "filing of"; (2) adding "or the appearance of a defendant in an action" before ", an attorney"; (3) substituting "an adult" for "a" before "patient" the first time it appears; and (4) adding "by the guardian or conservator of his person or estate," after "patient" the first time it appears.

##### 1975 Amendment:

(1) Added "or a copy thereof," after "deceased patient,"; (2) deleted "or" after "bioanalyst,"; and (3) added "or pharmacist or pharmacy," after "technologist,".

1978 Amendment:

Added the third paragraph.

1980 Amendment:

Added the third sentence of the third paragraph.

1986 Amendment:

(1) Amended the first paragraph by adding (a) "or his or her representative"; and (b) ", hers" after "under his" and ", or her," after "law or his" in the last part of the paragraph; (2) added the second paragraph; (3) deleted the former second and third sentences of the fourth paragraph which read: " 'Reasonable cost' as used in this paragraph means actual copying costs, not to exceed ten cents (\$0.10) per page, plus any additional reasonable clerical costs incurred in locating and making the records available. Such additional clerical costs shall be based on a computation of the time spent locating and making the records available multiplied by the employee's hourly wage."; and (4) added the fifth and sixth paragraphs.

1987 Amendment:

In addition to making technical changes, amended the last paragraph by (1) substituting "delivered to the attorney or the attorney's representative" for "produced"; and (2) adding ", plus actual costs, if any, charged to the record custodian by a third person for retrieval and return of records held offsite by the third person" at the end of the paragraph.

1993 Amendment:

Substituted (1) "osteopathic physician and surgeon" for "osteopath" after "licensed psychologist" in the first paragraph; and (2) "the" for "such" after "to make" in the third paragraph and after "availability of" in the fourth paragraph.

1997 Amendment:

Added "or employer" after "medical provider" in the first sentence of the second paragraph.

Collateral References:

3 Witkin Summary (10th ed) Agency and Employment § 553.

2 Witkin Cal. Evidence (4th ed) Discovery § 119.

*Cal. Legal Forms, (Matthew Bender) §§ 104.113, 104.223[1][e].*

*Cotchett, California Courtroom Evidence, § 20.30 (Matthew Bender).*

Matthew Bender (R) Practice Guide: Cal. Trial and Post Trial Civil Procedure § 11.91.

Law Review Articles:

Medical practice computer profile (proof of doctor's actions in series of similar cases); restrictions on discovery. 7 *UCD LR* 529.

An introduction to health care litigation in California. 8 *USF LR* 229.

Attorney General's Opinions:

This section as not affecting special provisions of *W & I C § 5328*, respecting confidentiality of information in records respecting recipients of services under Lanterman-Petris-Short Act. 53 *Ops. Cal. Atty. Gen.* 151.

Annotations:

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 *ALR3d* 944.

Hierarchy Notes:

Div. 9 Note

Div. 9, Ch. 3 Note

NOTES OF DECISIONS

1. Construction with Other Law
2. Private Right of Action

1. Construction with Other Law

A California superior court did not lack jurisdiction to compel production of a professional football player's medical records, under *Ev C § 1158*, from the professional football team that had employed him and the team's doctor, even though the player had filed an "injury grievance" against the team pursuant to a collective bargaining agreement between the professional football league's players' association and the league's management council. Federal law did not preempt the player's rights under § 1158. Section 1158 states a clear public policy of permitting a patient, before filing any action, to inspect and copy any medical records concerning the patient. The state has a significant interest in permitting employees to obtain their medical records through the procedures of § 1158. On the other hand, the controversy which could be presented to the National Labor Relations Board was whether the silence of the bargaining agreement with respect to arbitration-related discovery authorized the employer to withhold potentially material evidence from the employee. There was no great federal interest in sustaining the team's position concerning the interpretation of the agreement. Accordingly, the state's interest in retaining the vitality of § 1158 far outweighed the burdens, if any, upon the administration of the federal labor law. *National Football League Management Council v. Superior Court* (1983, Cal App 1st Dist) 138 Cal App 3d 895, 188 Cal Rptr 337, 1983 Cal App LEXIS 1295.

Trial court erred in sustaining a demurrer to a complaint alleging that a hospital's agent violated *Ev C § 1158* by charging an excessive amount for copies of medical records; the agent could be liable if it had assumed the duty of responding to § 1158 requests and if it acted in part for its own advantage and benefit, and the terms of the agreement between the agent and the hospital indicated that the agent had assumed the hospital's statutory obligations within the meaning of *CC § 1589*. *Thornburg v. Superior Court* (2006, Cal App 4th Dist) 138 Cal App 4th 43, 41 Cal Rptr 3d 156, 2006 Cal App LEXIS 446, rehearing denied (2006, Cal App 4th Dist) 2006 Cal App LEXIS 555, review denied (2006) 2006 Cal. LEXIS 8041.

## 2. Private Right of Action

Statutory cost limitations of *Ev C § 1158* can be enforced directly by patients in private actions. *Thornburg v. El Centro Regional Medical Center* (2006, Cal App 4th Dist) 143 Cal App 4th 198, 48 Cal Rptr 3d 840, 2006 Cal App LEXIS 1464, review denied (2006, Cal) 2006 Cal LEXIS 14868.

Hospital was not entitled to judgment on the pleadings in a patient's action alleging excessive copy fees because the patient could bring a private action to enforce the statutory cost limitations. *Thornburg v. El Centro Regional Medical Center* (2006, Cal App 4th Dist) 143 Cal App 4th 198, 48 Cal Rptr 3d 840, 2006 Cal App LEXIS 1464, review denied (2006, Cal) 2006 Cal LEXIS 14868.