

RESOLUTION 04.2022-02 (A-23)
INTEGRITY OF MEDICAL RECORDS IN LITIGATION

ISMS Board Action Taken on 06/25/2022

Adopted Resolution 04.2022-02 (A-23), as amended by the Medical Legal Council.

Medical Legal Council Recommendation to ISMS Board on 06/25/2022

The Council was provided with a copy of Resolution 04.2022-02 (A-23), including relevant ISMS policy, the results of a member survey, and copies of Illinois Supreme Court Rules 138 (Personal Identity Information and corresponding form), 236 (Admission of Business Records in Evidence), and Evidence Rule 403 (Exclusion of Relevant Evidence on Grounds of Prejudice, Confusion, or Waste of Time). The author also requested the Council be provided previously-passed resolutions related to litigation – Resolution B203 (A-17), Opposing Attorney Presence and/or Recording of Independent Medical Examinations (IME); Resolution C305 (A-17), Acceptance of Hospital-Based Serum Alcohol Results in Litigation and Resolution 1 (A-10), Oversight in Drug Testing.

The author attended the meeting and engaged in a lively conversation with the Council regarding the resolution. The author discussed his experience with the judicial system through the provision of expert witness testimony and depositions, and noted concern that judges will redact portions of a medical record, such as blood alcohol levels obtained through hospital-based laboratory tests. The author further opined that judicial discretion, when applied to information contained in medical records, is inappropriate as judges do not have a medical background and lack the education to determine what medical information should be redacted. The author stated that for the purpose of evidence in a civil or criminal case, a medical record should be admitted or excluded in its entirety, without any redactions. Additionally, the author expressed concerns regarding chain of custody documentation to prove the integrity of hospital-based laboratory tests, as such tests have superior identification modalities in place to ensure reliability.

The Council expressed concern with the redaction of medical records by a judge, but also noted scenarios where certain information may be unfairly prejudicial and rightly excluded, such as a patient’s mental health history when their mental health is not the issue in controversy. The Council took note that the Illinois Supreme Court Rules address admissibility of evidence, and that such Rules cannot be changed by the General Assembly due to their inherent role as a separate branch of government. The Council recommends instead that the ISMS communicate its concerns to the Illinois Judges Association and open a dialogue regarding potential changes to address the author’s

42 issue. The Council believes that an amended resolution is in order.

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44 The Medical Legal Council recommends that the ISMS Board of Trustees adopt
45 Resolution 04.2022-02 (A-23), as amended:

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47 ~~RESOLVED, that the trial court judge accepts (or rejects) properly subpoenaed~~
48 ~~and certified medical records in its entirety and not redact nor alter any clinical or~~
49 ~~laboratory information contained in the medical records from the trier of fact in civil~~
50 ~~and criminal litigation; and be it further~~

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52 ~~RESOLVED, that the court should not require chain of custody documentation~~
53 ~~to prove the integrity of any hospital-based laboratory test used for clinical purposes;~~
54 ~~and be it further~~

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56 ~~RESOLVED, that the ISMS support or introduce legislation to the same; and be~~
57 ~~it further~~

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59 ~~RESOLVED, that the Illinois Delegation to the AMA draft a resolution directing~~
60 ~~the AMA to create a policy to the same; and be it further~~

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62 ~~RESOLVED, that the ISMS Board of Trustees draft a letter to the Illinois Judges~~
63 ~~Association (IJA) to specify the above action regarding the redaction of medical records~~
64 ~~and the chain of custody for hospital laboratory tests.~~