

ILLINOIS STATE MEDICAL SOCIETY

**Resolution 04.2022-02
(A-23)**

Introduced by: Jerrold B. Leikin, MD, ISMS Member

Subject: Integrity of Medical Records in Litigation

Referred to: Medical Legal Council

1 Whereas, historically, health records were once considered hearsay and
2 inadmissible in legal proceedings; and

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4 Whereas, the Federal Rules of Evidence and the Uniform Rules of Evidence
5 codified the business records exception to the hearsay rule, thereby allowing health
6 records to be used at civil or criminal trials; and

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8 Whereas, medical records means all records and/or documents relating to the
9 treatment of a patient, including, but not limited to, family histories, medical histories,
10 report of clinical findings and diagnosis, laboratory test results, x-rays, reports of
11 examination and/or evaluation and any inpatient/outpatient admission/discharge records
12 which the licensee may have; and

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14 Whereas, the medical record is a legal document – thus many rules and
15 regulations apply, including regulations on documentation, record retention, privacy
16 acts, and disclosure; and

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18 Whereas, in Illinois, the recently adopted Illinois Supreme Court Rule 138, which
19 was effective Jan. 1, 2013, mandates that in civil cases “personal identity information
20 shall not be included in documents or exhibits filed with the court.”; and

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22 Whereas, according to Federal and Illinois rules of evidence (Rule 403 adopted
23 January 1, 2011), although relevant, evidence may be excluded if its probative value is
24 substantially outweighed by the danger of unfair prejudice, confusion of the issues, or
25 misleading the jury, or by considerations of undue delay, waste of time, or needless
26 presentation of cumulative evidence; and

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28 Whereas, “unfair prejudice” within this context means an undue tendency to
29 suggest decision on an improper basis, commonly, though not necessarily, an emotional
30 one; and

31 Whereas, trial court judges frequently redact or alter data (especially
32 laboratory/toxicology reports and clinical impressions) in properly subpoenaed medical
33 records from the trier of fact on the grounds that it may contain “unfairly” prejudicial
34 information; and

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36 Whereas, hospital-based testing for clinical diagnostic purposes is exceedingly
37 accurate and equivalent to sworn testimony; and

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39 Whereas, newer specimen identification modalities, such as bar coding or
40 wristband scanning, can exceed chain-of-custody techniques in its reliability; and

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42 Whereas, ISMS passed a resolution in 2017 [C305 (A-17)] stating that hospital-
43 based alcohol concentrations be admissible as evidence of intoxication even without any
44 other evidence of intoxication (i.e. erratic driving, slurred speech, eyewitness testimony,
45 etc.), and should serve as an exception to the hearsay rule and business records
46 exception, in civil and criminal cases; and

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48 Whereas, redaction or alteration of established medical records do not meet the
49 exceptions to Rule 403 rules of evidence as a justification for judges (as the gatekeeper
50 for evidence disclosure) to justify exclusion of extremely credible medical information
51 from the trier of fact; therefore, be it

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

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

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62 RESOLVED, that the ISMS support or introduce legislation to the same; and be
63 it further

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

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68 RESOLVED, that the ISMS Board of Trustees draft a letter to the Illinois Judges
69 Association (IJA) to specify the above action.

References:

1. Williams RH, Leikin JB. Medicolegal issues and specimen collection for ethanol testing. *Laboratory Medicine* 1999; 30(8): 530-537
2. Federal Rule 803(8): Sections A, B and C
3. *United States v. Oates*. 560 F 2d 45 (2nd Cir. 1977)
4. Giannelli PC. Admissibility of laboratory reports in criminal trials. *The Reliability of Scientific Proof*. *Ohio St. L.J.* 1988; 49:671-701
5. Illinois Rules of Evidence: Rule 201, Rule 703, Rule 803 (6).
6. *Petraski v. Thedos*: (No. 1-06-2914, 2008 WL 588544- 1st Dist. March 3, 2008)
7. *State v. Hopkins*, 431 S.C. 560 (Ct. App. 2020)
8. Skupsky, Donald S. and John C. Montana. *Law Records and Information Management: The Court Cases*. Denver, CO: Information Requirements Clearinghouse, 1994, 40.
9. *Lenny Szarek, Inc vs. Illinois Worker's Compensation Comm'n*. No. 03-08-0530WC (3rd District, October 2009)

Fiscal Note:

None

Existing ISMS policy related to this issue: