

No. 1986-145

AN ACT

HB 2072

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for rules of evidence in relation to medical records; providing for the use of certified copies and procedures relating to medical records; providing for the liability of directors of business and nonprofit corporations; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Chapters 61 and 83 of Title 42 of the Pennsylvania Consolidated Statutes are amended by adding subchapters to read:

CHAPTER 61
RULES OF EVIDENCE

* * *

SUBCHAPTER E
MEDICAL RECORDS

Sec.

- 6151. Use of certified copies.
- 6152. Subpoena of records.
- 6153. Receipts.
- 6154. Affidavit of none or partial possession.
- 6155. Rights of patients.
- 6156. Opening of sealed envelopes.
- 6157. Retention of records.
- 6158. Obtaining personal attendance of custodian.
- 6159. Obtaining production of original record.

§ 6151. Use of certified copies.

Medical charts or records of any health care facility licensed under the laws of this Commonwealth that are susceptible to photostatic reproduction may be proved as to foundation, identity and authenticity without any preliminary testimony, by use of legible and durable copies, certified in the manner provided in this subchapter by the employee of the health care facility charged with the responsibility of being custodian of the originals thereof. These copies may be used in any trial, hearing, deposition or other judicial or administrative action or proceeding, whether civil or criminal, in lieu of the original charts or records which, however, the health care facility shall hold available during the pendency of the action or proceeding for inspection and comparison by the court, tribunal or hearing officer and by the parties and their attorneys of record. This subchapter does not apply to an X-ray film or any other portion of a medical record which is not susceptible to photostatic reproduction.

§ 6152. Subpoena of records.

(a) Election.—When a subpoena duces tecum is served upon an employee of any health care facility licensed under the laws of this Commonwealth, requiring the production of any medical charts or records at any action or proceeding, it shall be deemed a sufficient response to the subpoena if the health care facility notifies the attorney for the party causing service of the subpoena, within three days of receipt of the subpoena, of the health care facility's election to proceed under this subchapter and of the estimated actual and reasonable expenses of reproducing the charts or records.

(b) Notice to other parties.—Upon this notification, the attorney causing the service of the subpoena shall notify all other attorneys of record or other parties, if they are not represented by attorneys, of the health care facility's election.

(c) Delivery of records.—Following this election, the health care facility shall hold the originals available, and, upon payment of its estimated reproduction expenses by the party causing service of the subpoena, or by any other party, shall within ten days deliver, by certified mail, return receipt requested, or by personal delivery, legible and durable copies, certified by the health care facility of all medical charts or records specified in the subpoena.

(d) Certification.—The certification shall be signed before a notary public by the employee of the health care facility charged with the responsibility of being custodian of the records and shall include the full name of the patient, the patient's medical record number, the number of pages in the medical records and a legend substantially to the following effect:

“The copies of records for which this certification is made are true and complete reproductions of the original or microfilmed medical records which are housed in (name of health care facility). The original records were made in the regular course of business at or near the time of the matter recorded. This certification is given pursuant to 42 Pa.C.S. Ch. 61 Subch. E (relating to medical records) by the custodian of the records in lieu of his personal appearance.”

Copies shall be separately enclosed and sealed in an inner envelope or wrapper bearing the legend “Copies of Medical Records.”

§ 6153. Receipts.

When the copies of records are personally delivered a receipt shall be presented to the person receiving the records for his signature and shall be immediately signed and returned to the person delivering the records. The receipt shall contain the name of the health care facility, the full name of the patient, the date the copies of records were received and the signature of the person receiving the records. When the copies of the records are sent via certified mail, pursuant to section 6152(d) (relating to subpoena of records), the receipt used by the postal authorities shall be sufficient to prove delivery and receipt of the copies of records.

§ 6154. Affidavit of none or partial possession.

If the health care facility has none of the charts or records specified in the subpoena, or only a part thereof, the custodian of the charts or records shall so state in a notarized affidavit and, following notice and payment of expenses, shall hold available the original charts or records which are in the health care facility's custody and specified in the subpoena and shall deliver the certified copies together with the affidavit.

§ 6155. Rights of patients.

(a) Protective order.—Any patient whose medical charts or records are copied and delivered pursuant to this subchapter, any person acting on such patient's behalf and the health care facility having custody of the charts or records shall have standing to apply to the court or other body before which the action or proceeding is pending for a protective order denying, restricting or otherwise limiting access to and use of the copies or original charts and records.

(b) Rights to records generally.—A patient shall have the right of access to all of his medical charts and records and to photocopy the same for his own use.

§ 6156. Opening of sealed envelopes.

The copy of the records shall remain sealed and shall be opened only at the time of trial, deposition or other hearing, upon the direction of the judge, court, officer, attorney, body or tribunal conducting the proceeding, in the presence of all parties who have appeared in person or by counsel at the trial, deposition or hearing. Before directing that the inner envelope or wrapper be opened, the judge, court, officer, attorney, body or tribunal shall first ascertain that either:

- (1) the records have been subpoenaed in accordance with this subchapter; or
- (2) the patient involved or someone authorized in his behalf to do so for him has consented thereto.

§ 6157. Retention of records.

When the copies of records are delivered to a party or his attorney of record for use in a deposition, they shall, after termination of the deposition, be delivered personally or by certified mail to the clerk of the court or other body before which the action or proceeding is pending, and it shall be the responsibility of the party or attorney to transmit the receipt obtained to the custodian of the original records. When the records are received by the clerk of a court or other body from a health care facility or from a party or his attorney of record, they shall be retained in the clerk's custody at all times except when actually used in the action or proceeding. Upon issuance of a final order terminating a case, the copies of the records will be promptly filed in a manner that protects the confidentiality of the medical information contained in the records by the clerk of the court with all other documents pertaining to the case until such a time as the normal retention period for court records expires. The copies of records shall then be permanently disposed of by the clerk in a manner that protects the confidentiality of the medical information contained in the records. Should the case be appealed, the

copies of records shall be forwarded to the appellate court with other documents pertaining to the case and retained and disposed of in the manner described in this section.

§ 6158. Obtaining personal attendance of custodian.

The personal attendance of the custodian of the original charts or records specified in the subpoena shall be required if the subpoena duces tecum so specifies.

§ 6159. Obtaining production of original record.

The production of the original record shall be required if the subpoena duces tecum so specifies.

CHAPTER 83 PARTICULAR RIGHTS AND IMMUNITIES

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SUBCHAPTER F CORPORATE DIRECTORS' LIABILITY

Sec.

8361. Short title of subchapter.

8362. Definitions of subchapter.

8363. Standard of care and justifiable reliance.

8364. Personal liability of directors.

8365. Nonexclusivity and supplementary coverage.

8366. Construction of subchapter.

8367. Application of subchapter.

§ 8361. Short title of subchapter.

This subchapter shall be known and may be cited as the Directors' Liability Act.

§ 8362. Definitions of subchapter.

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Business corporation.” Any corporation subject to the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law, the act of November 30, 1965 (P.L.847, No.356), known as the Banking Code of 1965, or the act of December 14, 1967 (P.L.746, No.345), known as the Savings Association Code of 1967.

“Nonprofit corporation.” A corporation subject to 15 Pa.C.S. Part III (relating to corporations not-for-profit).

§ 8363. Standard of care and justifiable reliance.

(a) Director as fiduciary.—A director of a business corporation or of a nonprofit corporation shall stand in a fiduciary relation to the corporation and shall perform his duties as a director, including his duties as a member of any committee of the board upon which he may serve, in good faith, in a manner he reasonably believes to be in the best interests of the corporation and with such care, including reasonable inquiry, skill and diligence, as a person of ordinary prudence would use under similar circumstances. In per-

forming his duties, a director shall be entitled to rely in good faith on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared or presented by any of the following:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented.

(2) Counsel, public accountants or other persons as to matters which the director reasonably believes to be within the professional or expert competence of such person.

(3) A committee of the board upon which he does not serve, duly designated in accordance with law, as to matters within its designated authority, which committee the director reasonably believes to merit confidence. A director shall not be considered to be acting in good faith if he has knowledge concerning the matter in question that would cause his reliance to be unwarranted.

(b) Consideration of factors.—In discharging the duties of their respective positions, the board of directors, committees of the board and individual directors may, in considering the best interests of the corporation, consider the effects of any action upon employees, upon suppliers and customers of the corporation and upon communities in which offices or other establishments of the corporation are located, and all other pertinent factors. The consideration of those factors shall not constitute a violation of subsection (a).

(c) Presumption.—Absent breach of fiduciary duty, lack of good faith or self-dealing, actions taken as a director or any failure to take any action shall be presumed to be in the best interests of the corporation.

§ 8364. Personal liability of directors.

(a) General rule.—Whenever the bylaws of a corporation by a vote of the shareholders or members so provide, a director of a business corporation or of a nonprofit corporation shall not be personally liable for monetary damages as such for any action taken, or any failure to take any action, unless:

(1) the director has breached or failed to perform the duties of his office under section 8363 (relating to standard of care and justifiable reliance); and

(2) the breach or failure to perform constitutes self-dealing, willful misconduct or recklessness.

(b) Exception.—The provisions of this section shall not apply to:

(1) the responsibility or liability of a director pursuant to any criminal statute; or

(2) the liability of a director for the payment of taxes pursuant to local, State or Federal law.

§ 8365. Nonexclusivity and supplementary coverage.

(a) General rule.—The indemnification and advancement of expenses provided by or pursuant to section 410 of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law, section 4 of the act of

April 18, 1945 (P.L.253, No.114), entitled "An act relating to suits by shareholders against officers or directors in a corporation, domestic or foreign, to enforce a secondary right because the corporation refuses to enforce rights, which may be asserted by it, requiring that plaintiff be a shareholder at the time of the transaction of which he complains, or that his shares thereafter devolved upon him by operation of law; requiring security for defendant's expenses, including attorneys' fees; and providing for the assessment and recovery of such expenses, including attorneys' fees," and 15 Pa.C.S. §§ 7741 (relating to third party actions), 7742 (relating to derivative actions) and 7743 (relating to mandatory indemnification), or any other provisions of law providing for indemnification or advancement of expenses applicable to any business corporation or nonprofit corporation shall not be deemed exclusive of any other rights to which a person seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of shareholders, members or directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding that office. The provisions of section 409.1 of the Business Corporation Law and 15 Pa.C.S. § 7728 (relating to interested directors; quorum) or corresponding provisions of law applicable to any business corporation or nonprofit corporation shall be applicable to any bylaw, contract or transaction authorized by the directors under this section. Any business corporation or nonprofit corporation may create a fund of any nature, which may, but need not be, under the control of a trustee, or otherwise secure or insure in any manner its indemnification obligations, whether arising under or pursuant to this section or otherwise.

(b) When indemnification is not to be made.—Indemnification pursuant to subsection (a) shall not be made in any case where the act or failure to act giving rise to the claim for indemnification is determined by a court to have constituted willful misconduct or recklessness.

(c) Grounds.—Indemnification pursuant to subsection (a) under any bylaw, agreement, vote of shareholders, members or directors or otherwise may be granted for any action taken or any failure to take any action and may be made whether or not the corporation would have the power to indemnify the person under any other provision of law except as provided in this section and whether or not the indemnified liability arises or arose from any threatened, pending or completed action by or in the right of the corporation. Such indemnification is declared to be consistent with the public policy of this Commonwealth.

(d) Payment of expenses.—Expenses incurred by an officer, director, employee or agent in defending a civil or criminal action, suit or proceeding may be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation.

(e) Rights to indemnification.—The indemnification and advancement of expenses provided by, or granted pursuant to, this section shall, unless otherwise provided when authorized or ratified, continue as to a person who

has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

§ 8366. Construction of subchapter.

This subchapter shall not be construed to repeal or otherwise affect or impair section 409.1 of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law, or section 8332.2 (relating to officer, director or trustee of nonprofit organization negligence standard).

§ 8367. Application of subchapter.

This subchapter shall not apply to any actions filed prior to the effective date of this subchapter nor to any breach of performance of duty or any failure of performance of duty by any director or officer occurring prior to the effective date of this subchapter.

Section 2. (a) The following acts and parts of acts are repealed:

Section 408 and subsection E of section 410 of the act of May 5, 1933 (P.L.364, No.106), known as the Business Corporation Law.

15 Pa.C.S. § 7734 (relating to relation of directors and officers to corporation).

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 3. This act shall take effect in 60 days.

APPROVED—The 28th day of November, A. D. 1986.

DICK THORNBURGH