

Approved

Date: *March 15, 2001*

MINUTES OF THE SENATE JUDICIARY COMMITTEE.

The meeting was called to order by Chairperson John Vratil at 9:39 a.m. on March 14, 2001 in Room 123-S of the Capitol.

All members were present.

Committee staff present:

Gordon Self, Revisor

Mike Heim, Research

Mary Blair, Secretary

Conferees appearing before the committee:

John Parisi, Kansas Trial Lawyers Association (KTLA)

Roger Fincher, Kansas Bar Association (KBA)

Jerry Slaughter, Kansas Medical Society (KMS)

Rita Buurman, Sabetha Community Hospital

Joe Hiersteiner, Health Midwest

Nikki Adams, Kansas Health Information Management Association (KHIMA)

Others attending: see attached list

Minutes of the March 13th meeting were approved on a motion by Senator Donovan, seconded by Senator Schmidt. Carried.

SB 88—concerning access to health care records and health care billing records by patients and others

Conferee Parisi testified in support of **SB 88**. He discussed the need for “right of access legislation” whereby Kansas citizens will have the right to obtain their medical information on a timely low cost basis. He presented a comparison study of states which provide statutory right of access and discussed an illustration of variance in medical records costs. He detailed KTLA amendments which were drafted after meeting with medical group representatives and discussed the proposed Health Insurance Portability and Accountability Act (HIPAA). (attachment 1) He also referenced written testimony from Jim Howell and Matthew D. All (see listed under written testimony)

Conferee Fincher testified in support of **SB 88**. He discussed ways in which medical record requests are treated comparing the differences between workers compensation requests, which are subject to a fee schedule, and non work compensation requests, which have no fee guidelines. He also discussed the lack of timeliness in receiving requested medical records. (attachment 2) At the request of Marlene Niesinger, the conferee read portions of her testimony. (see listed under written testimony) Discussion followed regarding HIPAA.

Conferee Slaughter testified in opposition to **SB 88** stating that this bill addresses a problem where none exists. He briefly discussed three principles which are part of KMS policy: patients have rights to access their medical records; rights to reasonable cost for medical records; and rights to receive them without unreasonable delay and stated that there already are current laws that are adequate to address violations of these rights. He further discussed HIPAA which is to be implemented soon and stated it would be better to wait and determine the implications of this act prior to setting more regulations. He offered an alternative to **SB 88** which he stated was hastily put together do to time constraints. (attachment 3)

Conferee Buurman testified in opposition to **SB 88**. She stated that she agreed with a patient’s right to have timely low cost access to their medical records and testified to the manner in which her hospital complies with this. She discussed how **SB 88** will create numerous conflicts with state and federal laws, how unnecessary it is, and how it erodes the patient’s right to confidentiality. (attachment 4)

Conferee Hiersteiner testified in opposition to **SB 88**. He identified how several of the bill's provisions would make compliance complicated and difficult, stated that the bill expands a number of time-honored definitions, and discussed how it is inconsistent with HIPAA provisions as well as other applicable laws and creates varying standards for health care providers operating in Kansas and Missouri. ([attachment 5](#))

Conferee Adams testified in opposition to **SB 88**. She addressed four issues KHIMA has with the bill which relate to: confidentiality; corrections and authentication of medical information; HIPAA; and medical record copy cost. ([attachment 6](#)) Discussion followed. The Chair announced that he would bring **SB 88** forward for possible final action on Monday, March 19th.

Written testimony supporting **SB 88** was submitted by: James Howell (KTLA); ([attachment 7](#)) Matthew D. All, Assistant Commissioner, Kansas Insurance Department; ([attachment 8](#)) and Randall E. Fisher, Attorney, Newton, Kansas; ([attachment 9](#)) and Marlene Niesinger, KTLA. ([attachment 10](#))

Written testimony opposing **SB 88** was submitted by: Larrie Ann Lower, Kansas Association of Health Plans; ([attachment 11](#)) Ellen Piekalkiewicz, Association of Community Mental Health Center of Kansas, Inc.; ([attachment 12](#)) Bob Alderson, Kansas Pharmacists Association; ([attachment 13](#)) Bill Sneed, The Health Insurance Association of America, ([attachment 14](#)) The University of Kansas Hospital Authority, ([attachment 15](#)) The State Farm Insurance Companies; ([attachment 16](#)) Nell S. Thompson, Wesley Medical Center; ([attachment 17](#)) Loretta Hoerman, Kansas Academy of Physician Assistants; ([attachment 18](#)) Sisters of Charity of Leavenworth Health System; ([attachment 19](#)) Dennis D. Tietze, The Kansas Academy of Family Physicians; ([attachment 20](#)) Susan Grace, Kansas Physical Therapy Association; ([attachment 21](#)) Dr. Richard Warner, Overland Park, Kansas; ([attachment 22](#)) Willard Grosz, Shawnee Mission Medical Center; ([attachment 23](#)) Kansas State Nurses Association; ([attachment 24](#)) Gary L. Robbins, Kansas Optometric Association; ([attachment 25](#)) Kevin J. Robertson, Kansas Dental Association. ([attachment 26](#))

The meeting adjourned at 10:31 a.m. The next meeting is March 15, 2001.

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 14, 2001

NAME	REPRESENTING
Jim Pearson	Kennedy
John S. AUSTIN	FAA
Tom Bell	KHA
Vita Brumm	Scholar's Cancer Hosp. Inc.
Bill Sneed	UKIYA
Bill Sneed	State Farm
Bill Sneed	NIDA
BOB ALDERSON	Ks. PHARMACEUTICALS ASSOC.
PHILIP HURLEY	PAT HURLEY & CO. / KAFI
LARRY BUENING	BD OF HEALING ARTS
Bill Grosz	Saint Lukes Shawnee Mission Health System
Larry W Pitman	Ks Foundation For Medical Care.
Gary Robbins	Ks Optometric Assn
Chip Wheelen	Ks Assn of Osteopathic Med.
John Parba	Ks Assn of Defense Counsel
Ani Hyten	JUDICIAL BRANCH
Rene Ann Power	KATP
Natalie Bright	Via Christi
Sister Ann Marie Lorenz	Sis of Charity of Leavenworth Health System

SENATE JUDICIARY COMMITTEE GUEST LIST

DATE: March 14, 2001

NAME	REPRESENTING
Mary Ellen Corlee	Via Christi Reg. Med. Center
Jennifer Cross	Federico Consulting
Ron Hein	Hein & Weir, Chfd. Wesley Medical Ctr
Jim Stewart	Wesley Medical Center
Dee Thompson	Wesley Medical Center
Frank Lidama	KHIMA
Bob Jones	KSC
Joe Herold	KSC
Kevin Robertson	KS DENTAL ASSN
Colleen Mull	(Kathy Damron + Assoc
Kathy Damron	St Lukes Shawnee Mission
Jeri Freed	KS Dental Bd
Paul Davis	KS Bar Assn.
Rick Pettit	Health Midwest
JOE HIERSTEINER	HEALTH MIDWEST <small>MENORAH MEDICAL CENTER Overland Park Regional Medical Center.</small>
BUD BURKE	AHIDS
Bill Henry	KS Governmental/Consulting
Steve Dickerson) KTLA
John Parisi	
Roger Finkler	KBA



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Judiciary Committee

FROM: John Parisi
Legislative Chair
Kansas Trial Lawyers Association

RE: 2001 SB 88

DATE: March 13, 2001

Dear Senator Vratil and Members of the Senate Judiciary Committee: my name is John Parisi. I am here today as Vice-President of Legislation of the Kansas Trial Lawyers' Association testifying in support of Senate Bill 88. The purpose of SB 88 is to provide Kansas citizens with a statutory right to obtain their medical records within a reasonable timeframe and for a reasonable cost.

Need for Right of Access Legislation

Under current Kansas law, there is no statutory right for a person to obtain medical records. In fact, Kansas is only one of a handful of states that does not provide its citizens with a statutory right to access to their medical information by obtaining a copy of their medical records. In August of 1999 a report was prepared for the Robert Wood Johnson Foundation entitled, "The State of Health Privacy: An Uneven Terrain, a Comprehensive Survey of State Health Privacy Statutes." This report includes a survey of the law regarding a right of access to a patient's medical records in all 50 states. Among the key findings of the Health Privacy report is the fact that Kansas is one of only six states that does not provide any statutory right for patients to receive and copy their own medical records. Other key findings in the report are that 44 out of the 50 states provide patients some right of access to their records, with 33 providing a statutory right of access to hospital records, 13 states providing a right of access to HMO records, and 16 states providing a right of access to insurance records.

Kansas law is clearly lacking in this critical area of patients' access to health information. Under current law, Kansas citizens do not have a guaranteed right of access to their own medical information. It is time to pass a law to ensure Kansas citizens the right to obtain their own medical records as do the vast majority of citizens throughout the United States. SB 88 will accomplish this result.

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Terry Humphrey, Executive Director

In addition to needing a statute that provides for a statutory right of access to a patient's medical information, there is also a need for records, once requested, to be provided in a timely manner and at a reasonable cost. SB 88 addresses both of these concerns by requiring the records to be provided for inspection or copying within 30 days of a receipt of an authorization. It also limits copying fees to those provided for under the Kansas Worker's Compensation Schedule for Medical Fees.

KTLA Amendments

Since initially drafting SB 88, KBA and KTLA representatives have met with and obtained comments from representatives of the Kansas Medical Association, the Kansas Hospital Association, the Kansas Pharmacists Association, and other members of the medical profession in the state. Based upon our meetings and the written comments received from several of these organizations, we have amended the language of Senate Bill 88 to simplify its overall structure and to address the stated concerns of the medical profession. Set forth below is a section by section review of SB 88, with proposed amendments, based upon these discussions with Kansas medical provider organizations.

Section 1

Section 1 provides definitions of key terms as used in the act. Most of the definitions come from existing Kansas statutes, or from the proposed Health Insurance Portability and Accountability Act (HIPAA) regulations that have recently been issued by the federal government and are scheduled to be implemented over the next several years.

Key definitions in SB 88 include "**health care provider**", "**patient**", "**health care**", "**health care records**", and an "**authorization**". These definitions provide the building blocks for the remaining sections of the act.

The "**health care provider**" definition of Section 1(a) is derived primarily from language defining a health care provider in K.S.A. 40-3401 and K.S.A. 7-121(b). It includes all licensed health care professionals within the state. We have simplified the definition by removing "health maintenance organization" from the language originally contained in the act. Although Health Maintenance Organizations do act as health care providers, they also serve an insurance function. Patients will be able to obtain records from individual physicians, hospitals and clinics providing care within an HMO context under the act. The definition of "**patient**" in Section 1(b) has been greatly simplified to mean "a person who receives health care". The definition of "**health care**" in Section 1(e) comes from HIPAA and takes into account the wide spectrum of services provided by the health care industry.

The definition of "**representative of a patient**" in Section 1(c) has also been simplified and former sub-section (2), regarding incompetent patients, has been removed based on concerns raised by the medical profession.

The definition of "**health care records**" in section 1(f) has been simplified and combined with the definition of 1(g), "**health care billing records**" in response to concerns raised in discussions with the medical community.

Perhaps the most significant change to the definitions section is the amendment to section 1(d) which removes authorized party and substitutes the definition for an **"authorization."** This definition sets forth the requirements of what an authorization for medical records in the State of Kansas must contain, and also provides who may sign the authorization. The authorization section conforms in large measure with the authorization form currently in place and used by the Wichita Medical Legal Committee and has been worked out over a number of negotiations over a number of years. It also conforms with the procedure for obtaining medical records conventionally used throughout the state.

This simply codifies in the law the common practice in the State of Kansas for obtaining medical records. More importantly, it specifies the individuals and entities entitled to execute authorizations to receive this information while maintaining confidentiality. Importantly, by removing the definition of "authorized party" and substituting "authorization" in section 1(d), we have removed the concerns of the medical community that a patient's representative could authorize someone else to obtain medical records.

Section 2

Section 2 of SB 88 sets forth the procedure by which medical records are to be requested and provided by the health care provider. This section has been greatly simplified by the incorporation of the use of a medical authorization to obtain records. Once the provider obtains written notice by the medical authorization that records are being requested, the provider has 30 days to either provide access to or copies of the records, or state why the records are not being provided (in accordance with the provisions of subsection 5). We have increased the time frame from 10 to 30 days in response to comments received from the medical community. The 30-day time frame is also provided for in HIPAA.

Section 3

A new section 3 has been added to the bill specifically providing that the person or entity obtaining the medical records is to maintain patient confidentiality of the records. This section specifically addresses the concerns expressed that SB 88 would expand access to records and weaken patient confidentiality. This provision clearly and unequivocally states that patient confidentiality is to be maintained by the recipient of records obtained pursuant to an authorization.

Section 4

This section establishes that health care providers may charge a reasonable amount for the copies of medical records. It limits what may be charged for copies of records to the Workers Compensation Schedule of Medical Fees issued by the Kansas Department of Human Resources unless the provider establishes that the records cannot be retrieved and copied for the amount provided for in the fee schedule. The Workers Compensation Fee Schedule is used in all Workers Compensation cases in Kansas and establishes a reasonable fee for the cost of copying medical records. Importantly, the fee schedule is not static, but is subject to change by the Kansas Department of Human Resources. The fee schedule provides a well-established, time tested and workable solution to the problem of exorbitant fees that are being charged for medical records by some providers.

We have attached as an exhibit a sample of the charges for medical records that we have been billed in my office. As you can see, charges exceed a dollar a page in most instances and over \$5 per page in others. SB 88 will solve this problem.

The key point is that SB 88 ties the costs of providing medical records to that already used in existing Kansas law, which is the "Workers Compensation Schedule for Medical Fees". Thus, under SB 88, the health care provider may charge the same amount they are currently charging for providing medical records in Workers Compensation cases in the State of Kansas. SB 88 also explicitly provides that a provider may charge more than the fee schedule amounts in circumstances where it will be more costly for a provider to obtain and copy the medical records.

Section 5

Section 5 of SB 88 allows health care providers to refuse to provide medical records when doing so would harm the patient or violate state or federal law. Section 5(a) allows a health care provider to refuse to provide the records if providing them would create a significant risk of harm to the patient. It is derived from existing Kansas law, specifically, K.S.A. 65-5601. Section 5(a) also provides that a health care provider can withhold access to copies of health care records if the production of said records violated state or federal law, including peer review and risk management statutes. The addition of this section clearly establishes that peer review and other statutory privileges will continue to exist under Kansas law after the passage of SB 88 and should alleviate any concerns of the medical community regarding the definitions included in the act.

The key point is that section 5(b) of SB 88 provides that the healthcare provider after receipt of a properly executed authorization has 30 days to provide the records, or otherwise indicate in writing why the records will not be produced. For example, if the records would release information that would cause substantial harm to the patient, the records may be withheld by the healthcare provider. Other reasons for withholding the records include the applicability of statutory prohibitions, such as peer review or risk management.

Section 6

Section 6 provides an enforcement measure for SB 88. If a provider wrongfully withholds medical records to which a patient is entitled, this provision provides that the patient (or representative of a patient) may bring an action to obtain the records. In the event the patient is successful, and if the judge finds the records were withheld without just cause or excuse, the judge is to award the costs of the action as well as order the records be provided to the patient without charge.

Section 7

Section 7 of the act specifies that SB 88 does not limit or impair access to health care records or health care billing records under any federal law statute, regulation, rule or order. Thus, the passage of Senate Bill 88 will not impair or impede in any manner HIPAA should it be finally enacted by the federal government or any other state or federal law. In that regard, we have attached a letter from Matthew All, the Assistant

Kansas Commissioner of Insurance, indicating that SB 88 does not interfere with HB 2480, the Model NAIC legislation, regarding the Insurance Privacy Act.

We urge the committee to provide Kansas citizens with a right to obtain their medical information by passing SB 88. If enacted, Senate Bill 88 will provide all Kansas citizens with a statutory right to obtain their medical records within a reasonable timeframe and at a reasonable cost.

Thank you for the opportunity to appear before the Senate Judiciary Committee to offer our comments and encourage your support of SB 88. I will attempt to answer any questions that you may have.

PATIENT ACCESS		
Entity Note: Each state defines these terms differently.	States that Provide Access	Total
State Provides <i>Some</i> Access	AL*, AK, AZ, CA, CO, CT, DC*, DE, FL, GA, HI, ID*, IL, IN, KY, LA, MA, ME, MD, MI, MN, MS, MO, MT, NC, NH, NJ, NM,* NY, NV, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, WA, WI, WV, WY * The state only explicitly grants patients access to mental health records (4 total).	44
Hospitals and Health Care Facilities	AK, AZ, CA, CT, CO, GA, HI, IL, IN, KY, LA, MA, ME, MI, MN, MO, MS, NJ, NH, NY, NV, OH, OK, PA, SC, SD, TN, TX, VA, WA, WI, WV, WY	33
Health Care Practioners, Providers, and/or Physicians	AK, AZ, CA, CT, CO, FL, GA, HI, IL, IN, LA, MA, MD, ME, MN, MO, MT, NH, NY, NV, PA, SC, SD, TN, TX, VA, WA, WI, WV	29
HMO-s	CA, CT, GA, HI, IL, MA, MN, MT, NC, NJ, NY, PA, VA	13
Insurers	AZ, CA, CT, HI, IL, MA, MD, ME, MN, MT, NC, OH, NJ, OR, RI, VA, WI	17
Optometrists	CO, SD, WI	3
Pharmacists and/or Pharmacies	AK, AZ, CO, CT, HI, IN, LA, NV, SD, VA, WI	11
Mental Health Records (Explicit Access Granted)	AL, AZ, CT, DC, DE, FL, GA, ID, IL, IN, MI, MO, MS, NC, NM, NV, OH, SC, SD, TX, VA, WI	22
Additional Access:	AK, CO, FL, MN, NY, SC, WI	7
No access provided for in statute.	AR,* IA, KS, ND, NE **, VT, UT*** * The state only provides access in conjunction with an anticipated or on-going legal proceeding. ** The state only provides access in connection with proceedings for commitment to a mental health facility. *** The state only provides limited access to an attorney or to government records.	7

Illustration of Variances in Medical Records Costs Submitted by John Parisi

	Request A	Request B	Request C	Request D	Request E (microfiche)
Actual Charges	\$78.02	\$27.28	\$49.16	\$478.66	\$41.39
Pages	43	5	16	422	12
Clerical Fee	\$30.00	\$20.00	\$30.00	\$20.00	\$20.00
Page Fee	\$43.00	\$5.00	\$16.00	\$422.00	\$18.00
Retrieval Fee					
Shipping/Handling		\$0.55		\$6.50	\$0.77
Tax	\$5.02	\$1.78	\$3.16	\$30.16	\$2.62
Av cost/page	\$1.81	\$5.76	\$3.10	\$1.31	\$3.45
Workers Comp Fee	\$25.00	\$15.00	\$25.00	\$155.25	\$25.00
Difference	\$53.02	\$12.28	\$24.16	\$323.41	\$16.36

SENATE BILL No. 88

By Committee on Judiciary

1-22

AN ACT concerning access to health care records and health care billing records by patients and others.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a person who holds a temporary permit to practice any branch of the healing arts issued by the state board of healing arts, a person engaged in a postgraduate training program approved by the state board of healing arts, a podiatrist, an optometrist, a pharmacist, a dentist, a physical therapist, a psychiatrist, a psychologist, a licensed professional counselor, a licensed clinical professional counselor, a licensed master level psychologist, a licensed clinical psychotherapist, a licensed specialist clinical social worker, a baccalaureate social worker, a master social worker, a specialist social worker, a licensed marriage and family therapist, a nurse practitioner, a nurse anesthetist, a physician's assistant, a hospital, a medical center or clinic, a medical care facility, an ambulatory surgical center, ~~a health maintenance organization,~~ a psychiatric hospital, a mental health center or mental health clinic or other person or entity providing medical or health care within the State of Kansas;

(b) "patient" means a person who receives ~~medical or~~ health care from a health care provider, including but not limited to, any examination, testing, evaluation, diagnosis or treatment of any physical or psychological injury, illness or disorder or any claimed physical or psychological injury, illness or disorder;

(c) "representative of a patient" means: (1) A parent of a minor child patient; (2) ~~a spouse, child or parent of a patient who is not competent;~~ (3) the guardian or conservator of a patient; (4) an heir of a deceased patient or an executor, administrator or other representative of a deceased patient's estate; ~~or (5) an attorney or other person designated in writing by a patient or by a representative of a patient;~~

~~(d) "authorized party" means a person or entity who has been authorized by the patient or the patient's representative, or by court order or operation of law, to have access to health care records or health care~~

the patient's attorney in fact under a power of attorney,

, guardian ad litem,

(d) "Authorization" means a written or printed document signed under oath or affirmation by a patient or a representative of a patient containing (1) a description of a patient's records a provider is authorized to produce; (2) the patient's name, address and date of birth; (3) a designation of the person or entity authorized to inspect or obtain copies of the patient records; (4) a date or event upon which the force of the authorization shall expire which shall not exceed one year; (5) if signed by a representative of a patient, the representative's name, address, telephone number, and relationship or capacity to the patient; and (6) a statement setting forth the right of the person signing the authorization to revoke it in writing.

ing records of the patient for a limited purpose;

(e) "health care" means the provision of care, services or supplies to a patient and includes any: (1) Preventive, diagnostic, therapeutic, rehabilitative, maintenance or palliative care, counseling, service or procedure with respect to the physical or mental condition, or functional status, of a patient or affecting the structure or function of the body; (2) sale or dispensing of a drug, device, equipment or other item pursuant to a prescription; or (3) procurement or banking of blood, sperm, organs or any other tissue for a administration to patients;

(f) "health care records" means any information, recording, data, papers, records or documents generated or maintained by a health care provider whether in written, photographic, ultrasonographic, fluoroscopic, microfilm, audiotape, videotape or electronic form concerning medical or health care, treatment or evaluation of the patient, including but not limited to, notes, summaries, reports, forms, films, images, telephone orders or messages, x-rays, monitor strips, slides, electronically or computer stored data, printouts and correspondence, and

~~(g) "health care billing records" means any records or information concerning the charges or fees for medical or health care, treatment or evaluation of the patient, or any payments or adjustments thereto, including but not limited to, billings, ledgers, electronically or computer stored data, printouts and correspondence.~~

including billing records identifying the services rendered to the patient, any charges or fees for the services rendered and any billing payments, credits or adjustments.

Sec. 2. (a) Except as provided in section 5, and amendments thereto, a patient or representative of a patient, upon ~~reasonable notice or request~~, shall be entitled to inspect and copy any health care records ~~or health care billing records~~ in the possession of a health care provider concerning ~~medical or health care~~ of the patient.

providing a health care provider an authorization

(b) Any health care provider who receives ~~a request~~ from a patient or representative of a patient for access to or copies of any health care ~~records or health care billing records~~, shall provide access to or copies of such records ~~within 10 days after the receipt of such notice or request, or shall notify the patient or representative of the patient making the request within 10 days after the receipt of such notice or request, of the reason why access to or copies of such records is being withheld or delayed, indicating the date when access to or copies of such records will be provided.~~

an authorization

within thirty (30) days after the receipt of such authorization or explain why access to or copies of the records are being withheld

~~Sec. 3. (a) Except as provided in section 5, and amendments thereto, an authorized party, upon reasonable notice or request, shall be entitled to inspect and copy any health care records or health care billing records in the possession of a health care provider concerning medical or health care of the patient, subject to any limitations upon the authorization.~~

~~(b) Any health care provider who receives a notice or request from an authorized party for access to or copies of any health care records or~~

~~Health care billing records, shall provide access to or copies of such records within 10 days after the receipt of such notice or request, or shall notify the authorized party making the request within 10 days after the receipt of such notice or request of any reason why access to or copies of such records is being withheld or delayed, indicating the date when access to or copies of such records will be provided.~~

~~(c) An authorized party who has obtained health care records or health care billing records concerning a patient shall, upon notice or request, supply a copy of such records to the patient or representative of the patient.~~

~~(d) An authorized party who has obtained health care records or health care billing records concerning a patient shall maintain the confidentiality of such records and shall not use or release such records except for the purpose for which authorization was given by the patient or representative of the patient, or in connection with the proceedings for which authorization was given by court order or operation of law.~~

~~Sec. 4. (a) No charge for retrieving or copying health care records shall exceed the maximum fees allowed under the workers compensation schedule of medical fees issued by the Kansas department of human resources unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied without additional expense.~~

~~(b) A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records, and may demand that such reimbursement be provided in advance of providing access to or copies of such records.~~

~~(c) A health care provider shall not be entitled to reimbursement of any expenses incurred in retrieving or copying health care billing records unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied in the ordinary course of business.~~

~~(d) A health care provider shall not make any alterations, additions or deletions of information recorded in the health care records of a patient except that a health care provider may make additional contemporaneous entries in the health care records, and may make corrections or additions to the health care records which are clearly designated as late entries with the date of entry shown.~~

Sec. 5. (a) A health care provider may withhold or limit access to or copies of health care records or health care billing records, or a portion thereof, if the health care provider certifies that providing access to or copies of the requested records, or a portion thereof, will create a significant risk of harm to the patient

(b) If a health care provider withholds or limits access to or copies of

Sec. 3. A person or entity

Sec. 4. (a) A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records not to exceed the maximum fees allowed under the workers compensation schedule of medical fees issued by the Kansas department of human resources unless the health care provider establishes the reason the requested records cannot reasonably be retrieved or copied without additional expense, and may demand that such reimbursement be provided in advance of providing access to or copies of such records.

or violates state or federal law, including peer review or risk management statutes.

1 with care records or health care billing records under subsection (a)
 2 ~~because releasing such records to the patient or to a specific represen-~~
 3 ~~tative of the patient or authorized party would create a significant risk of~~
 4 ~~harm to the patient, the health care provider shall arrange to provide~~
 5 ~~access to or copies of the requested records to another representative of~~
 6 ~~the patient or authorized party, or to the patient, under conditions suf-~~
 7 ~~ficient to protect the patient from the risk of such harm, if it is reasonably~~
 8 ~~possible to do so.~~

the health care provider shall notify the requesting party in writing, within 30 days of receipt of the request, of the nature of the records being withheld and the reason for denying access to the withheld records.

9 Sec. 6. (a) Any health care provider, patient, representative of a pa-
 10 ~~tient or authorized party~~ may bring a claim or action to enforce the pro-
 11 ~~visions of this act, and any court having jurisdiction of such claim or action~~
 12 ~~may, in its discretion, award attorney fees for failure to comply with this~~
 13 ~~act without just cause or excuse.~~

shall, upon a showing that the

,award the costs of the action and order the records produced without cost or expense to the requesting party.

14 (b) The patient, or a representative of a ~~minor, incompetent or de-~~
 15 ~~ceased~~ patient, shall be given reasonable notice of any action concerning
 16 access to or copying of health care records or health care billing records,
 17 and may intervene as a party in any such action.

18 Sec. 7. This act shall not be construed or interpreted to limit or im-
 19 ~~pair access to health care records or health care billing records under any~~
 20 ~~federal or state statute, law, regulation, rule or order.~~

(a)

21 ~~Sec. 8. This act shall take effect and be in force from and after its~~
 22 ~~publication in the statute book.~~

or (b) applicable peer review or risk management statutes

Section 8. This act shall be known and may be cited as the patient's access to health care records act.

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**KANSAS BAR
ASSOCIATION**

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Topeka, Kansas 66601-1037
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Email: ksbar@ink.org

**LEGISLATIVE TESTIMONY
SENATE BILL 88**

March 14, 2001

TO: Chairman John Vratil and Members of the Senate Judiciary
Committee

FROM: Roger Fincher, Kansas Bar Association

RE: Senate Bill 88

Mr. Chairman and Members of the Committee:

I am Roger Fincher, Topeka attorney and member of the Kansas Bar Association. I am here today to testify on behalf of the Kansas Bar Association in support of Senate Bill 88 and to discuss Section 4 of the bill. The Kansas Bar Association has over 6,000 members and is composed of plaintiff and defense attorneys, both of which have an interest in access and reasonable costs in receiving medical records for their clients.

Workers compensation records/bills

Currently, medical record requests are treated in several different ways. All workers compensation requests are subject to a fee schedule, which has been in effect since 1993. I have attached a copy of this schedule to my testimony. The schedule is administered by the Division of Workers Compensation and is evaluated every two years by the Division's Medical Fee Schedule Advisory Panel. This panel is almost

Sen Fincher
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att 2

entirely comprised of health care providers, so the medical community has a great deal of input in evaluating and adjusting the schedule. The fee schedule places the following limitations on the photocopying of medical records:

Up to 10 pages:	\$15.00
11-50 pages:	\$25.00 (\$15.00 for 1st 10 pages plus \$10.00 for 11-50 pages)
Above 50 pages:	\$25.00, plus \$0.35 per page above 50

The reason that we utilize the work comp fee schedule in this bill is because health care providers are familiar with it. We do this rather than writing a set fee into statute like Missouri (Missouri law caps photocopying costs at 35 cents per page and allows for a retrieval fee) so that every time the fee schedule needs to be changed legislation is not required. As you can see in the schedule, provisions are made for x-rays or medical documents that would obviously cost more to reproduce. The schedule simply places a reasonable \$5.00 limitation on reproduction of these items.

I should also mention that I have had numerous instances where providers have tried to charge me fees above the work comp schedule for medical records that are work-comp related and clearly fall under the work comp fee schedule. I believe that a uniform fee schedule will ensure that these instances don't occur.

Non work comp medical record requests

Medical record requests which are not workers' compensation related have no fee schedule guidelines. While some providers copy their own records and charge rates within the fee schedule, a vast majority charge rates far and above those in the workers compensation fee schedule and use outside for-profit copying services to copy the records.

While the fee schedule allows providers to charge a maximum of \$15.00 for up to 10 pages of copies, many copy services consistently charge twice that amount for 3-4 pages. An attached chart shows the difference in costs charged for medical records by two copy services versus the work comp fee schedule. Furthermore, I have attached numerous examples of copying charges on non-workers compensation cases.

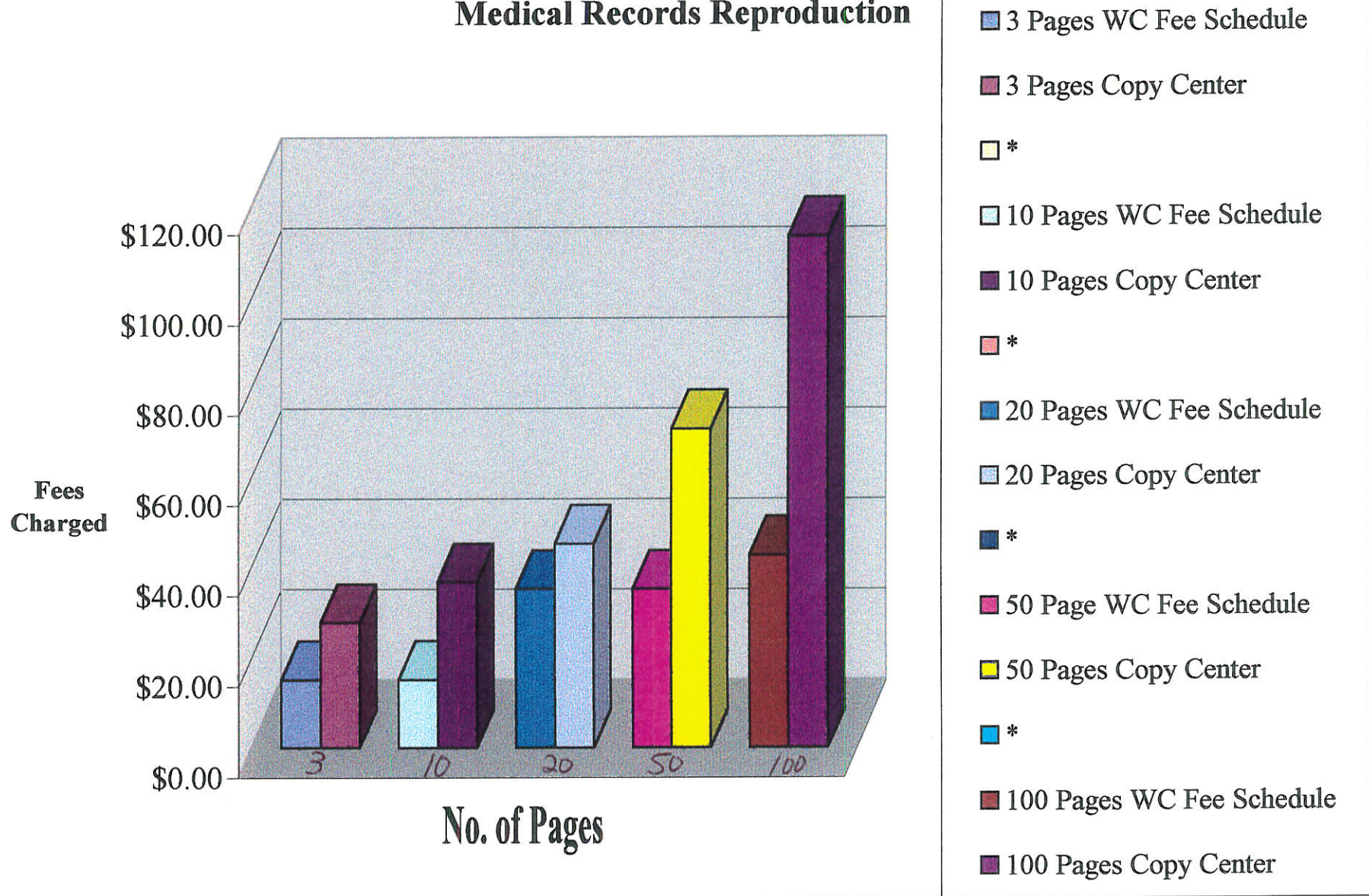
Timeliness

There is a significant problem with receiving medical records in a timely manner from providers. I recall a story one attorney told me about how after requesting records from a physician's office for several months on behalf of a client, he finally went to the physician's office in person and waited for two hours until the office finally produced the records. There wasn't a problem with the authorization from the client, the physician's office simply didn't feel that it was important to produce the records in a timely manner. Jim Howell, an attorney in Wichita, states in the written testimony he has provided to you that "in Sedgwick County it is not uncommon to wait months to get medical records from health care providers." I literally can't tell you how many stories I have heard about problems with receiving medical records in a timely manner. I believe that Marlene Nicsinger, who works in the medical records department at the Law Office of Albert

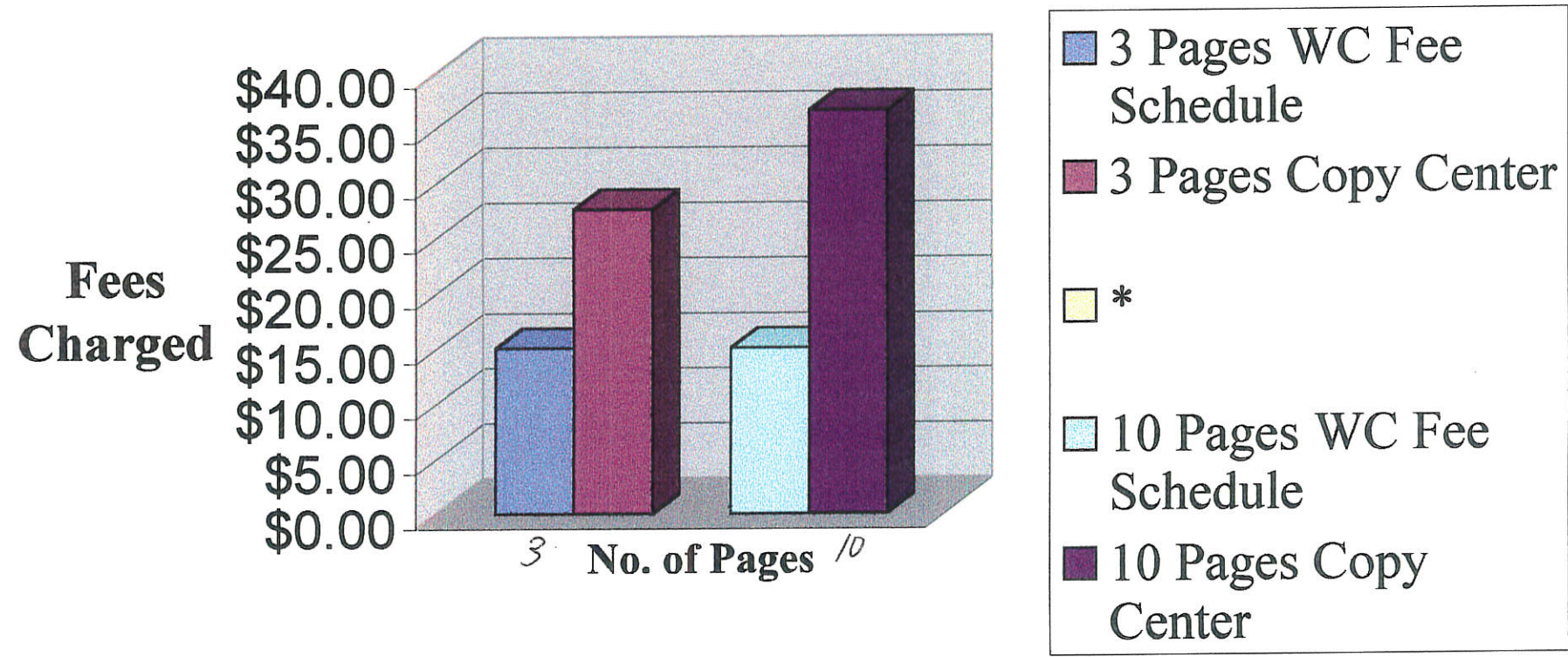
Herdoiza, does a very good job of describing the problem. I want to read a portion of the letter that she has submitted to you (see attached letter).

It is unfortunate that we have to come to the legislature to solve this problem, but there simply is no workable alternative. Patients ought to be able to access their medical records in a timely manner and at a reasonable cost. The Kansas Bar Association is committed to these principles and that is why we are before you today to support Senate Bill 88. I appreciate your attention to this very important matter and sincerely thank you for your time in allowing me to testify today.

Medical Records Reproduction



Medical Records Reproduction



smartcorporation

P.O. Box 1812
 Alpharetta, GA 30005-9901
 Fed Tax ID 95-3313004
 770-754-6000

INVOICE

Date	Invoice #
08/30/2000	01770373

Bill to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:


ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500 SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: ROGER D FINCHER
 Patient Name:
 DOB:

Description	Quantity	Price Per	Amount
Basic Fee			17.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	13	0.85	11.05
Shipping/Handling			5.05
Subtotal			33.10
Sales Tax			0.00
Invoice Total			33.10
Balance Due			33.10

Play - 707

> 2.00 / page

Return stub with payment.

Please include invoice number on check.
 To pay by credit card, please call 770-754-6000.

01770373

Check # _____

Payment Amount \$ _____

411810
E. 11/18/00

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797
(785) 235-5678
FAX (785) 357-1729

NOV 10 2000

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER D. FINCHER

November 3, 2000

Stormont -Vail
Attn: Medical Records & Billing
1500 SW 10th Street
Topeka, KS 66604-1353

R
S
D

Greetings:

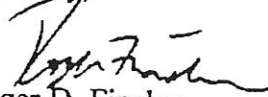
We represent _____ in connection with injuries sustained in a series of workers compensation accidents. Please send us all of your records pertaining to

Enclosed is a medical authorization. Please send us copies of your up-to-date medical records concerning our client including, but not limited to, all notes, correspondence, reports, etc.

Your reasonable charges for the photocopies will be promptly paid by our firm.

Additionally, please provide us with an itemized billing showing all existing charges, whether paid or unpaid.

Sincerely,


Roger D. Fincher

RDF/mk

cc: Client

2-9

smartcorporation

P.O. Box 1812
Alpharetta, GA 30005-9901
Fed Tax ID 95-3313004
770-754-6000

INVOICE

Date	Invoice #
11/07/2000	02589536

Bill to:

ROGER D FINCHER
BRYAN LYKINS HEJTMANEK ET AL
PO BOX 797
222 W SEVENTH ST
TOPEKA, KS 66601-0797

Ship to:

ROGER D FINCHER
BRYAN LYKINS HEJTMANEK ET AL
PO BOX 797
222 W SEVENTH ST
TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
1500 SOUTHWEST 10TH STREET
TOPEKA, KS 66604

Requested By: ROGER D FINCHER
Patient Name:
SSN:
OTHER:

Description	Quantity	Price Per	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	3	0.85	2.55
Shipping/Handling			0.33
Subtotal			27.88
Sales Tax			0.00
Invoice Total			27.88
Balance Due			27.88

OVERCHARGE FOR W.C. BILL

Return stub with payment.

Please include invoice number on check.

To pay by credit card, please call 770-754-6000.

02589536

Check # _____

Payment Amount \$ _____

smartcorporation

P.O. Box-1812
 Alpharetta, GA 30005-9901
 Fed Tax ID 95-3313004
 770-754-6000

INVOICE

Date	Invoice #
11/28/2000	02815875

Bill to:

ROGER FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:

ROGER FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500-SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: ROGER FINCHER
 Patient Name:
 SSN:

Description	Quantity	Price Per	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	41	0.85	34.85
Shipping/Handling			1.87
Subtotal			61.72
Sales Tax			0.00
Invoice Total			61.72
Balance Due			61.72

\$ 11-50 pgs w/c
\$ 25.00

OVER CHARGE FOR
w.c. bill

Return stub with payment.

Please include invoice number on check.
 To pay by credit card, please call 770-754-6000.

02815875

Check # _____

Payment Amount \$ _____ 2-11

3280, 10
IP 11/3/00

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797
(785) 235-5678
FAX (785) 357-1729

Work Comp

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER D. FINCHER

November 21, 2000

Stormont -Vail
Attn: Medical Records & Billing
1500 SW 10th Street
Topeka, Kansas 66606

RE : ██████████, Jr. _____
SSN:
DOL:

Greetings:

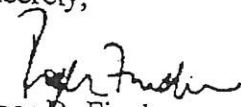
We represent ██████████ in connection with injuries sustained in a workers compensation accident. Please send us all of your records pertaining to ██████████ Jr..

Enclosed is a medical authorization. Please send us copies of your up-to-date medical records concerning our client including, but not limited to, all notes, correspondence, reports, etc.

Your reasonable charges for the photocopies will be promptly paid by our firm.

Additionally, please provide us with an itemized billing showing all existing charges, whether paid or unpaid.

Sincerely,


Roger D. Fincher

RDF/mk

smartcorporation

P.O. Box 1812

Alpharetta, GA 30005-9901

Fed Tax ID 95-3313004

770-754-6000

INVOICE

Date	Invoice #
11/07/2000	02590508

Bill to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500 SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: ROGER D FINCHER

Patient Name:

SSN:

Description	Quantity	Price Per	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	1	0.85	0.85
Shipping/Handling			0.33
Subtotal			26.18
Sales Tax			0.00
Invoice Total			26.18
Balance Due			26.18

\$26.18 for 1 page

Return stub with payment.

Please include invoice number on check.

To pay by credit card, please call 770-754-6000.

02590508

Check # _____

Payment Amount \$ _____

47-883
OP-1112/02

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797
(785) 235-5678
FAX (785) 357-1729

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER D. FINCHER

Work
Comp

NOV 6 REC'D

November 3, 2000

Stormont -Vail
Attn: Medical Records & Billing
1500 SW 10th Street
Topeka, KS 66604-1353

Greetings:

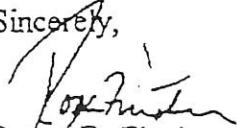
We represent _____ in connection with injuries sustained in a series of workers compensation accidents. Please send us all of your records pertaining to workers

Enclosed is a medical authorization. Please send us copies of your up-to-date medical records concerning our client including, but not limited to, all notes, correspondence, reports, etc.

Your reasonable charges for the photocopies will be promptly paid by our firm.

Additionally, please provide us with an itemized billing showing all existing charges, whether paid or unpaid.

Sincerely,


Roger D. Fincher

RDF/mk
cc: Client

smartcorporation

P.O. Box 1812
 Alpharetta, GA 30005-9901
 Fed Tax ID 95-3313004
 770-754-6000

INVOICE

Date	Invoice #
02/09/2001	0003704747

Bill to:

MED REC
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:

MED REC
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500 SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: BRYAN LYKINS HEJTMANEK ET AL
 Patient Name:
 SSN:

Description	Quantity	Price Per	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	60	0.85	51.00
Shipping/Handling			2.44
Subtotal			78.44
Sales Tax			0.00
Invoice Total			78.44
Balance Due			78.44

PAID
 DATE 2/22
 CHECK # 10903
 AMOUNT _____

60 pages \$78.44

Return stub with payment.

Please include invoice number on check.
 To pay by credit card, please call 770-754-6000.

0003704747

Check # _____

Payment Amount \$ _____

2-15

smartcorporation

P.O. Box 1812
 Alpharetta, GA 30005-9901
 Fed Tax ID 95-3313004
 770-754-6000

INVOICE

Date	Invoice #
08/30/2000	01770302

Bill to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500 SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: ROGER D FINCHER
 Patient Name:
 DOB:
 OTHER:

Description	Quantity	Price Per	Amount
Basic Fee			17.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	3		2.55
Shipping/Handling			3.52
Subtotal			23.07
Sales Tax			0.00
Invoice Total			23.07
Balance Due			23.07

PAID
 DATE 9/18/00
 CHECK # 12575
 AMOUNT

pay \$8.00/page
 VERY FAIR PRICE
 SEND TO A.G.'s
 Not W.C. = \$8.00/page
 Office w/ letter
 RDF

Return stub with payment.

Please include invoice number on check.

To pay by credit card, please call 770-754-6000.

01770302

Check # _____

Payment Amount \$ _____

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER D. FINCHER

PHONE (785) 235-5678
1-800-608-2473
FAX (785) 357-1729

June 30, 1999

Maynard Oliverius, President & CEO
Stormont-Vail Regional Medical Center
1500 SW 10th Avenue
Topeka, KS 66604-1353

RE: Copying Charges for Medical Records

Dear Mr. Oliverius:

Enclosed you will find a bill I recently received from Smart Corporation along with a letter I sent your hospital dated June 4th, 1999 asking for records pertaining to my client, Smart Corporation charged me \$30.77 for four pages of records which is unreasonable and unfair to my client.

Recently I received over 50 pages of records from St. Francis Hospital regarding one of my clients and they charged me \$10.00.

In the past, my law firm has had excellent relations with your hospital, especially when we try to make sure insurance companies pay our clients bills that were incurred at Stormont-Vail Hospital. It is very difficult to explain to my clients why they should pay up to \$8.00 per page to records from Stormont-Vail Hospital and at the same time spend many hours pressuring insurance companies to pay unpaid medical bills.

After you review this letter, please call me.

Sincerely,

Dan Lykins

DL:gc
Enclosures
Cc:

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER FINCHER

PHONE (785) 235-5678
1-800-608-2473
FAX (785) 357-1729

November 27, 2000

Stormont-Vail Hospital

RE:

Dear _____:

Enclosed you will find an invoice I received from the Smart Corporation in which they charged me \$39.37 for copying 16 pages of medical records from Stormont-Vail Hospital for my client, Sharon Inman. I believe the Smart Corporation is not being reasonable when they charge \$2.46 per page for to receive medical records.

I recently received 18 pages of medical records from St. Francis Hospital in Topeka, Kansas and they charged me \$10.00 for these records or a cost per page of approximately \$.56. Most of our law firm business is in the personal injury area, and thus over the years we have always made an effort to make sure our clients bills at Stormont-Vail Hospital and other medical institutions are paid out of settlements whenever possible. It is very difficult to explain to a client that we are taking money out of her settlement to pay Stormont-Vail their bill when at the same time Stormont-Vail is charging our client anywhere from \$2.50 per page up to \$10.00 per page for medical records.

After you review this letter, would you or someone in your office please call me so we may discuss this letter in more detail.

Sincerely,

Dan Lykins

DL:gc
cc:

ATTEMPT TO RESOLVE

z-18

STORMONT-VAIL

RE: SMART CORPORATION

Dear ___:

Enclosed you will find a copy charge bill from Smart Corporation for two pages of records that totals \$22.07. These two pages of records from Stormont-Vail Hospital were needed by _____ regarding an injury claim he is pursuing through our office and once this case is concluded the charges for these two pages will be deducted from his settlement.

St. Francis Hospital of Topeka has their own in-house copying service and in the past I have paid anywhere from \$5.00 to \$10.00 to obtain 20-50 pages of hospital records.

As soon as you receive this letter, would you or someone from your office call me so we may discuss the Smart Corporation and their unreasonable charges for copying Stormont-Vail records.

Cc: - -

Cc: Jim Bryan
Dan H.
Roger F.

ATTEMPT TO RESOLVE

SMART

Medical Record Correspondence Copying Pre-payment Request

Payment options : Check, Visa & Master Card. Checks must be payable to Smart Corporation. Credit card payments please call (770) 360-1794.

If paying by check, PLEASE mail check payment to the Remit Address below

Sold To :	<u>Roger Fincher</u>	Check Payment	Remit To :	<u>Stormont-Vail</u>
Requester:	<u>B, L, H, & F</u>		Attention :	<u>Medical Records - R01</u>
Address:	<u>222 7th St -</u>		Address :	<u>1500 SW 10th</u>
City, ST, Zip:	<u>Topeka KS 66601</u>		City, ST, Zip :	<u>Topeka, KS 66604</u>
Telephone :	<u>235-5678</u>		Telephone :	<u>354-6816</u>

Dear Medical Record Requester,
We received your request for medical record copies for

Patient: _____
Soc. Sec. #: _____

Date of Birth: _____
Date of admission: 1/3/99

SMART Corporation has contracted with Stormont-Vail (Medical facility/ State) to copy it's authorized requests for medical records. We are an independent service organization that specializes in processing third party requests for medical records. Our own qualified personnel inspects, copies and mails the medical record requests. All copies are made from original medical records at the designated health care facility.

The charges for performing this service are detailed below. We require PREPAYMENT in order to process your request.

SMART'S FEE SCHEDULE:			
Page Count	<u>4</u>	Retrieval Fee	<u>12.00</u>
Basic Fee	<u>16.00</u>	Shipping/Handling	<u>3.42</u>
Per Page Fee	<u>.75</u>	Sales Tax	<u>—</u>
			Transaction Total <u>\$ 34.42</u>
			(Check Number) _____
			(Credit Card Tracking #) <u>P/S pay PT</u>

Do NOT write Credit card number on this form!

If you prefer, we can provide an abstract for \$ _____ which consists of:

- Face Sheet
- History & Physical
- x-rays
- Consultations
- Discharge Summary
- Other
- Progress Notes
- Pertinent Lab Tests

99V9403

DATE 1/20
CHECK # 18067
AMOUNT _____

If you prefer you may make private arrangements to copy the requested records, or you may contract with an independent copy service to provide this service on your behalf. If you select this option, you must obtain prior approval and schedule an appointment with the Medical Record Director in advance.

Smart Representative Lindsay Powell Rep# 30835

Health Care Facility Phone# 354-6816 Area / Site # 417/00/8068

> \$8.00 / page

007 P.02
OP 11/19/99

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

ATTORNEYS AT LAW
222 WEST SEVENTH STREET
P.O. BOX 797
TOPEKA, KANSAS 66601-0797
(913) 235-5678
FAX (913) 357-1729

JAN 13 2000

JOHN J. (JIM) BRYAN
DAN LYKINS
DANTON C. HEJTMANEK
ROGER D. FINCHER

January 3, 2000

Stormont -Vail
Attn: Medical Records & Billing
1500 SW 10th Street
Topeka, KS 66604-1353

Greetings:


We represent ~~in connection with injuries sustained in an accident~~ which occurred on or around November 3, 1999.

Enclosed is a medical authorization. Please send us copies of your up-to-date medical records concerning our client including, but not limited to, all notes, correspondence, reports, etc.

Your reasonable charges for the photocopies will be promptly paid by our firm.

Additionally, please provide us with an itemized billing showing all existing charges, whether paid or unpaid.

Sincerely,


Roger D. Fincher

RDF/mk
cc: Client

A
BSC
1/13/00

Invoice

P.O. Box 750323
 Topeka, KS 66675-0323
 FED. ID # 48-1172599
 785-354-0527 / Fax #: 785-286-3581

DATE	INVOICE NO.
11/13/2000	63094

BILL TO
Bryan, Lykins & Hejtmanek, P.A. Roger D Fincher 222 W 7th PO BOX 797 Topeka, KS 66601-0797

PATIENT INFORMATION

PAGE COUNT	TERMS	FACILITY
7	DUE ON RECEIPT	Cotton O'Neil

ITEM	DESCRIPTION
C p1 CNRF SH Invoice	Cotton O'Neil page count 1 Cotton O'Neil Retrieval Fee Subtotal Shipping & Handling PLEASE INCLUDE INVOICE NUMBER ON CHECK AND SEND TO ABOVE ADDRESS <div style="text-align: right;"> PAID DATE <u>11/21</u> CHECK # <u>10751</u> AMOUNT _____ </div> <div style="text-align: right; font-size: 2em; font-weight: bold;"> PLS PAY AT </div> <div style="text-align: center; font-size: 1.5em; font-weight: bold;"> 7 pages \$30.21 </div> <div style="text-align: right; font-weight: bold;"> PLEASE SEND CHECK TO ABOVE ADDRESS </div>

Payment needs to be made by the 15th of the month to avoid a 1.5% late fee charge on next statement.

Total

\$30.21

Qu... Copy Service, Inc.

INVOICE

2025 Prairie Ln
Emporia, KS 66801
Phone/Fax (316) 342-3147
Fed Tax ID: 48-1172599

DATE	INVOICE #
11/29/2000	39452

BILL TO	PATIENT INFORMATION
Bryan, Lykins & Hejtmanek Roger Fincher PO Box 797 Topeka, KS 66601-0797	

Page Count	Terms	Facility
2	Due on receipt	Topeka OB/G...

ITEM	DESCRIPTION	QTY
TOGA	Topeka OB/GYN	
p1	page count	2
TORF	Topeka OB/GYN Retrieval Fee	
	Subtotal	
SH	Shipping/Handling	

*pd 2/17/01
13935*

\$ 12.00 / page

We appreciate your prompt payment.

Total

\$24.17

BRYAN, LYKINS, HEJTMANEK & FINCHER, P.A.

222 West 7th Street

P.O. Box 797

Topeka, Kansas 66601-0797

(785)235-5678

Fax: (785)357-1729

JOHN (JIM) BRYAN
DAN LYKINS
DANTON HEJTMANEK
ROGER D. FINCHER

March 2, 2001

Smart Corporation
P.O. Box 1812
Alpharetta, GA 3005-9901

RE: - - - - -

Greetings:

As you are aware I represent the above-mentioned client in a workers compensation case.

My office requested records from Stormont-Vail on February 12, 2001. The request clearly states that we are requesting records regarding his WORKERS COMPENSATION INJURIES.

I have been in contact with your corporation several times regarding over charging my clients for copies of their medical records. I would assume that this was a simple mistake if it happened one or two times but my firm has had this situation occur quite frequently.

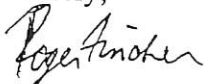
Please provide my office with a written statement of what attempts you are making to rectify this problem. It has been approximately 7 years since this law was passed and you should have had any problems with mistaken billing solved by now. Perhaps if there were one rate you charged for all medical records, this problem would be rectified.

I enclose a copy of the original request for records and a copy of your incorrect bill. Please provide me with a new bill with the corrected charges and my firm will promptly pay the corrected amount.

ATTEMPT TO RESOLVE

I look forward to your response regarding the above situation.

Sincerely,



Roger D. Fincher

RDF:dkb

Cc: Fraud & Abuse
Attorney General's Office

Encl.

sm... corporation

P.O. Box 1812
 Alpharetta, GA 30005-9901
 Fed Tax ID 95-3313004
 770-754-6000

INVOICE

Date	Invoice #
02/20/2001	0003837821

Bill to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
 PO BOX 797
 222 W SEVENTH ST
 TOPEKA, KS 66601-0797

Ship to:

ROGER D FINCHER
 BRYAN LYKINS HEJTMANEK ET AL
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 TOPEKA, KS 66601-0797

Records from:

STORMONT-VAIL REGIONAL
 1500 SOUTHWEST 10TH STREET
 TOPEKA, KS 66604

Requested By: ROGER D FINCHER
 Patient Name:
 SSN:

Description	Quantity	Price Per	Amount
Basic Fee			25.00
Retrieval Fee			0.00
Per Page Copy (Paper) 1	3	0.85	2.55
Shipping/Handling			0.34
Subtotal			27.89
Sales Tax			0.00
Invoice Total			27.89
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INVOICE

DATE 2/12/2001
INVOICE # 51141

BILL TO

Bryan, Lykins & Hejtmanek
Roger Fincher
PO Box 797
Topeka, KS 66601-0797

PATIENT INFORMATION

Page Count 4
Terms Due on receipt
Facility Neurosurgical

ITEM	DESCRIPTION	QTY
N	Neurosurgical Associates	
pl	page count	4
	Subtotal	
SH	Shipping/Handling	

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Date	Invoice #
3/6/2001	64532

Bill To
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Patient Information

Page Count	Terms	Facility
5	DUE ON RECEIPT	Kansas Orthoped

Item	Description
O pl ORF SH	Kansas Orthopedic page count Orthopedic Ret Fee Subtotal Shipping & Handling
Invoice	<p style="text-align: right;">PAID DATE <u>3/9/01</u> CHECK # <u>10915</u> AMOUNT _____</p> <p>PLEASE INCLUDE INVOICE NUMBER ON CHECK AND SEND TO ABOVE ADDRESS</p>
A	<p>As soon as the payment is made, we will send the records, Thank You.</p> <p style="text-align: right;"><i>AS PAID</i></p> <p style="text-align: center;">\$ 5.00 + / page</p> <p style="text-align: center;">PLEASE SEND CHECK TO ABOVE ADDRESS</p>
Total	
\$26.22	

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2/28/2001	51318

BILL TO
 Bryan, Lykins & Hejtmanek
 Roger Fincher
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 Topeka, KS 66601-0797

PATIENT INFORMATION

Page Count	Terms	Facility
7	Due on receipt	Davis, Hamilton

ITEM	DESCRIPTION	QTY
HP	Saint Francis Family Medicine	
p1	page count	
HPRF	Saint Francis Family Medicine Retrieval Fee	7
	Subtotal	
SH	Shipping/Handling	

PAID
 DATE 3/9/01
 CHECK # 10915
 AMOUNT _____

7 pages / 27.59

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Invoice

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DATE	INVOICE NO.
2/23/2001	64377

BILL TO
Bryan, Lykins & Hejtmanek, P.A. Roger D Fincher 222 W 7th PO BOX 797 Topeka, KS 66601-0797

PATIENT INFORMATION

PAGE COUNT	TERMS	FACILITY
7	DUE ON RECEIPT	Kansas Orthoped

ITEM	DESCRIPTION
O pl ORF SH	Kansas Orthopedic page count Orthopedic Ret Fee Subtotal Shipping & Handling
Invoice	PLEASE INCLUDE INVOICE NUMBER ON CHECK AND SEND TO ABOVE ADDRESS As soon as the payment is made, we will send the records, Thank you.
	PAID DATE <u>3/9/01</u> CHECK # <u>10915</u> AMOUNT _____
	PLEASE SEND TO ABOVE ADDRESS
	Total \$27.59

PKS
 2-30



KANSAS MEDICAL SOCIETY

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3-14-01
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To: Senate Judiciary Committee
From: Jerry Slaughter
Executive Director
Date: March 14, 2001
Subject: SB 88; concerning health care records

The Kansas Medical Society appreciates the opportunity to appear today in opposition to SB 88, which creates new law relating to the issue of access to medical records. Let me begin by emphasizing that we, along with most other health care providers, agree in principle with the expressed intentions of the sponsors of this bill. We also take the responsibility to protect the confidentiality of patient information very seriously. We agree that patients should have access to their medical information, at reasonable cost, without unreasonable delay. Unfortunately, this bill goes way beyond those three basic principles. It goes so far beyond the mark that it is completely unacceptable.

The first question one ought to explore before asking the legislature to solve this problem is - what is the problem? Is there a widespread problem of patients not having access to their medical records in a timely fashion? We do not believe such a problem exists. In the overwhelming majority of instances, physicians, hospitals and other health care providers routinely process requests for copies of medical records from patients and their legally authorized representatives. Usually such requests are handled quickly with a minimum amount of paperwork and hassle for all involved. Physicians understand that patients have a right to their medical information, and they are already required by law to make such information available upon request.

The Healing Arts Act, at K.S.A. 65-2836 (b), provides that a physician may be disciplined for unprofessional conduct (defined at K.S.A. 65-2837 (b)). Among the grounds for a finding of unprofessional conduct are the following:

- (17) The use of any false, fraudulent or deceptive statement in any document connected with the practice of the healing arts including the intentional falsifying or fraudulent altering of a patient or medical care facility record.
- (20) Failure to transfer patient records to another licensee when requested to do so by the subject patient or by such patient's legally designated representative.
- (25) Failure to keep written medical records which accurately describe the services rendered to the patient, including patient histories, pertinent findings, examination results and test results.

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In addition, the rules and regulations of the Board, at K.A.R. 100-24-1, are quite specific about additional responsibilities of physicians regarding medical records. A copy of those regulations is attached to this testimony. As you can see, there already exists quite a bit of law and regulation on this subject. What about the current law and regulatory framework is inadequate? A physician can currently be disciplined, up to and including loss of license, by the Board for a broad array of potential violations involving patient medical records. We believe that current law is indeed adequate to address this issue. We further believe that SB88 is unnecessary, and as you see it before you today it is intended to do much more than the sponsors have disclosed.

For example, when we met with the KTLA on March 2 - a meeting we finally called after repeatedly urging them to call a meeting of the health care provider groups - we asked them specifically whether peer review records were included in the bill's very broad definition of "health care records." They responded that it wasn't their *intention* to include peer review records, but they would not agree to have such records specifically exempted from the definition. Now, we do not mind having a debate about the public policy governing the protection and discoverability of peer review records, which is a flashpoint subject between our two groups. But this is not the place to deal with such a controversial issue, particularly when it is not addressed in a straightforward, explicit manner. The sponsors' attitude on just this one point doesn't give us much comfort that there is not a hidden agenda imbedded within this bill.

Another consideration for the legislature should be the broader context of this whole issue. As many of you are aware, the federal Kassebaum-Kennedy collaboration, called HIPAA (the Health Insurance Portability and Accountability Act of 1996), is about to impose very broad and specific privacy regulations on all health care providers and others who do business in the health care system. The implementing regulations are set to become effective later this spring, with a two-year grace period before enforcement to allow health care providers and others to gear up to meet the requirements. We would strongly urge the committee to delay any action which attempts to further regulate the privacy issues affecting medical records until we have a complete understanding of the implications of HIPAA.

As to SB 88 itself, we are strongly opposed to it for numerous reasons, some of which we have already mentioned above. Particularly troubling is its breadth. The definitions are all too expansive, with the potential for mischief, such as the point involving peer review records. One definition, that of "representative of a patient," would substantially expand the list of individuals who could have access to a patient's medical records. We have already mentioned our concern with the overly broad definition of "health care records." We also disagree with the inclusion of billing records in this legislation. Our reading of SB 88 is that virtually any "billing" document, including a provider's underlying contract with an insurer, would be subject to disclosure. It could also be interpreted to include the internal documents and records of an insurer or a

hospital, as they relate to the process of utilization review. Again, we would be happy to discuss and debate the public policy implications of that subject, but it should be in a straightforward proposal which addresses the matter squarely.

The bill further defines health care records to include "...notes, summaries, ...telephone orders or messages," This is so broad that it will be virtually impossible for health care providers to avoid breaking the law. Under SB 88, a physician would have to keep and enter into the patient record all notes they wrote to themselves about the patient's care. For example, when a patient or the hospital calls a physician at home late at night and the physician jots a note about the patient's condition or the medication ordered, this bill would require that scrap of paper to become part of the permanent patient record that must be kept and then disclosed to the patient upon request. This is not only impractical, but it is unreasonable. It places an unnecessary burden on physicians, and contributes nothing to improving patient care.

Even though we do not believe that any action by the legislature is necessary - because existing law and regulation are more than adequate to assure patient access to their medical records - in response to the chairman's request, we have suggested an alternative to SB 88. We have so many problems with SB 88, that if you feel you must pass something, we would urge that you substitute our draft for the original. We must emphasize that the draft we have prepared has been put together quite quickly in order to have something for your consideration, and we have not had the opportunity to meet with all the affected parties and explain it in detail. However, our draft does address the principles of assuring patient's access to their medical records, at reasonable cost, without unreasonable delay. It also eliminates the overly broad definitions of the original bill, and exempts peer review records and other records protected from discovery by law. It makes it clear that patient records are confidential, and that the information in those records may only be released upon a written authorization or consent signed by the patient or the patient's legally authorized representative. Finally, we adopted a provision from Missouri's law which affords immunity to health care providers who provide copies of records pursuant to the law in good faith.

This is a complicated issue that really demands more study and discussion. At a minimum, the impact of HIPAA's privacy regulations needs to be fully evaluated and integrated into any legislation aimed at further regulating the release of medical records. We would prefer that you take no action, but if you do anything, we would urge that our draft substitute bill be adopted in lieu of SB 88. Thank you for considering our comments.

Article 24.--PATIENT RECORDS

100-24-1. Adequacy; minimal requirements. (a) Each licensee of the board shall maintain an adequate record for each patient for whom the licensee performs a professional service.

(b) Each patient record shall meet these requirements:

(1) Be legible;

(2) contain only those terms and abbreviations that are or should be comprehensible to similar licensees;

(3) contain adequate identification of the patient;

(4) indicate the dates any professional service was provided;

(5) contain pertinent and significant information concerning the patient's condition;

(6) reflect what examinations, vital signs, and tests were obtained, performed, or ordered and the findings and results of each;

(7) indicate the initial diagnosis and the patient's initial reason for seeking the licensee's services;

(8) indicate the medications prescribed, dispensed, or administered and the quantity and strength of each;

(9) reflect the treatment performed or recommended;

(10) document the patient's progress during the course of treatment provided by the licensee; and

(11) include all patient records received from other health care providers, of those records formed the basis for a treatment decision by the licensee.

(c) Each entry shall be authenticated by the person making the entry unless the entire patient record is maintained in the licensee's own handwriting.

(d) Each patient record shall include any writing intended to be a final record, but shall not require the maintenance of rough drafts, notes, other writings, or recordings once this information is converted to final form. The final form shall accurately reflect the care and services rendered to the patient.

(e) For purposes of implementing the healing arts act and this regulation, an electronic patient record shall be deemed a written patient record if the electronic record is authenticated by the licensee. (Authorized by K.S.A. 65-2865; implementing K.S.A. 1997 Supp. 65-2837, as amended by L. 1998, ch. 142, S 19 and L. 1998, ch. 170, S 2; effective, T-87-42, Dec. 19, 1986; effective May 1, 1987; amended June 20, 1994; amended Nov. 13, 1998.)

Substitute for SB 88

AN ACT concerning access to health care records by patients and their authorized representatives.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Health care provider" means those persons and entities defined as a health care provider under K.S.A. 65-4915, and amendments thereto, except for purposes of this act the term does not include health maintenance organizations.

(b) "Patient" means a person who receives medical or health care services from a health care provider.

(c) "Authorized representative" means the person designated in writing by the patient to obtain the health care records of the patient or the person otherwise authorized by law to obtain the health care records of the patient.

(d) "Health care records" means a written or electronic record maintained by a health care provider that reflects the clinical findings, examinations, tests, treatment, and services rendered to a patient by such health care provider. Records, documents, and information protected from disclosure pursuant to state or federal law, including but not limited to K.S.A. 65-4915 and K.S.A. 65-4921 *et seq.*, shall not be included within the definition of health care record.

Section 2. (a) Health care records shall be confidential and the information contained in such records may only be released pursuant to a written authorization or written consent by the patient or the patient's authorized representative, except upon order of a court of competent jurisdiction, or as otherwise required by law. A patient or the patient's authorized representative shall have a right to a copy of the information contained in such patient's health care records. Except as otherwise provided by law and subsection (b) of this section, a health care provider shall provide a copy of a patient's health care records to the patient or to the patient's authorized representative upon receipt of a written authorization or written consent from the patient or the patient's authorized representative.

(b) A health care provider may withhold copies of health care records, or a portion thereof, if the health care provider reasonably believes that providing copies of the requested records, or a portion thereof, will create a risk of harm to the patient, or if disclosure of health care records is otherwise prohibited by law.

(c) Any health care provider who receives a written authorization or written consent for copies of any health care records from a patient or from an authorized representative of a patient shall, within 30 days after the receipt of such written authorization or written consent, provide copies of such records or notify the patient or authorized representative of the patient making the request of the reason copies of such records are not available.

Section 3. An authorized representative who has obtained health care records concerning a patient shall maintain the confidentiality of such records and shall not use or release such records except for the purpose for which authorization or consent was given by the patient or in connection with the proceedings for which authorization was given by court order or operation of law.

Section 4. (a) A health care provider shall be entitled to reimbursement for the reasonable expenses incurred in retrieving and copying health care records.

(b) Except when the health care records are needed for treatment of the patient, a health care provider may demand that reimbursement for reasonable expenses be provided in advance of providing copies of health care records.

Section 5. Any health care provider who provides copies of health care records to a patient or an authorized representative of the patient in good faith and without malice pursuant to this act shall have immunity from any civil or criminal liability which might otherwise be incurred or imposed in an action resulting from release of such records.

Section 6. Any health care provider, patient, or authorized representative of a patient may bring a claim or action to enforce the provisions of this act.

Section 7. This act shall take effect and be in force from and after its publication in the statute book.

TALKING POINTS RE SB 88

- All health care providers support the right of a patient to access his or her medical records. Current hospital and physician regulations require this. SB 88, however, goes far beyond this basic right. It gives access to many potential parties who were never authorized by the patient.
- HIPAA will create a regulatory scheme dealing with all aspects of medical record keeping. In this regard, SB 88 is premature. In addition, SB 88 contains many conflicts with HIPAA and, in numerous cases, will be superceded when HIPAA becomes effective.
- The definition of "health care records" under SB 88 is so broad that it could encompass peer review records, risk management records and materials submitted to the Kansas Foundation for Medical Care and subsequent correspondence. If so, it would be in conflict with current state law.
- SB 88 creates a new cause of action that can be brought against a health care provider who violates the statute. Attorney fees can be awarded. Therefore, disputes that once were resolved at the hospital level can now go straight to court.
- SB 88 would create a statutory maximum on the fees that can be established in connection with the copying of the medical record. This maximum is tied to the workers compensation fee schedule, which was created for a specific type of case and is not necessarily applicable to every request for medical records.



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To: Senate Judiciary Committee
From: Rita Buurman, R.N.
CEO, Sabetha Community Hospital, Inc.
Date: March 14, 2001

Re SB 88

Thank you Mr. Chairman and members of the committee for the opportunity to appear today in opposition to SB 88. My name is Rita Buurman and I am the CEO of Sabetha Community Hospital. I am also a Registered Nurse and have experienced first hand numerous occasions when the release of records or medical information was an issue. I am appearing on behalf of the Kansas Hospital Association, an organization of approximately 140 community hospitals across the state.

We have several problems with Senate Bill 88. First, we think it will create numerous conflicts with state and federal laws. The main issue here is that the health care community is looking at the implementation of the federal regulations that will implement the Health Insurance Portability and Accountability Act (HIPAA). These regulations provide, in great detail, for a comprehensive regulatory scheme covering the release of health information. We feel the bill before you is premature in that it covers the same topic.

Second, we think SB 88 is unnecessary. Current hospital regulations mandate that patients have access to their health care records. Health care providers are very sensitive to this right. At least equally important, however, is the patient's right to confidentiality. Our main concern with SB 88 is that it erodes this right. The entire health care system is built upon the willingness of individuals to share the most intimate details of their lives with their health care providers. In this sense, patient privacy is not only a key societal value, but it is also necessary for the effective delivery of health care. Let me give you just a few examples of how SB 88 threatens this right. The bill states that a parent of a minor child patient is entitled to access that child's records. This would force us to provide that child's records to non-custodial parents, to step parents or to parents of minors who may be living on their own. Our institution has had more than one occasion when a minor child becomes a contentious issue between divorced parents. On one occasion a non-custodial father wanted an Emergency Room record from an injury, hoping to find evidence of child abuse. A non-custodial grandparent also requested those records for the same reason. There was no reason to suspect abuse and would have been reported to authorities had there been any evidence of such. Currently, our policy is to allow the patient or their legal representative to have the records.

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Our hospital, on hire of a new employee, spends a lot of time on the need for confidentiality. We have staff review those policies and sign an understanding of policy statement annually. Our policy handbook lists Breach of Confidentiality as a serious offense and one that an employee can be terminated for.

SB 88 also says that when the patient is incompetent, the spouse or any child or parent has access to their medical records. Further, it provides that when the patient is deceased, any heir may access the records. I can tell you that a provision like this invites much confusion and puts the health care provider in the role of handing out records to people who the patient would never have wanted to see such personal information. It has also been our experience that though a child, a niece, nephew, or other relative might be an heir, they might not be individuals our patient would want their medical information released to.

I have personally seen situations when a patient may choose not to share even their diagnosis with immediate family members, and have often made family promise not to divulge to other family members some very private details of their illness.

As a nurse, I feel we have a responsibility to allow the patient to be assured that only they or the person legally responsible for them has easy access to that information. Our patients trust us to do that as they share the most intimate details of their lives with us.

Finally, SB 88 says that any of these "patient representatives" I just mentioned could authorize anyone else they choose to access the patient's records. Clearly, the legislation holds the potential that individuals who the patient doesn't know and never intended to get the medical record will have access to that patient's most personal information. At a time when privacy of health care records is a major concern in our society, SB 88 has the potential to erode this privacy.

We could spend hours talking about these kinds of examples. We could spend as much time talking about the other kinds of problems created by this legislation. However, I would like to conclude by emphasizing another point. The Kansas Hospital Association supports the idea that a patient should have reasonable access to their records in a reasonable time period at a reasonable cost. That is why we are supportive of the type of alternative provided you by the Kansas Medical Society. While we cannot give our unequivocal support because the KHA board has not seen the alternative proposal, it represents a major improvement by focusing on the wishes of the patient and not the interests of third parties.

Thank you for your consideration of our comments.

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TESTIMONY BEFORE THE KANSAS SENATE JUDICIARY COMMITTEE
REGARDING SENATE BILL 88
PRESENTED BY
JOSEPH L. HIERSTEINER
SENIOR VICE PRESIDENT AND GENERAL COUNSEL
HEALTH MIDWEST

- I. Introduction. Health Midwest appreciates the opportunity to appear before the Judiciary Committee and to present our views regarding Senate Bill 88. Our institutions located in Kansas, Menorah Medical Center, Overland Park Medical Center and Allen County Hospital provide records to patients and their representatives every day. The way in which this is done and the complexity or simplicity of the process is very important in assisting patients in obtaining the care that they need. Senate Bill 88 is very complex, expands a number of definitions that are time honored and conflicts squarely with the federal legislation, HIPAA, which will set the standard for this issue throughout the nation. For those reasons and the reasons to follow, we oppose the Bill.
- II. Hospital Providers Support the Rights of Patients to Obtain Copies of their Records. All hospital providers support the right of patients to have access to their medical records. This right is exercised in practice every day in hospitals across Kansas. During the last 12 months, in response to some 16,500 requests, our Kansas hospitals provided over 400,000 pages of documents. The average turnaround time for those requests was approximately 7-8 days from the receipt of the request. We are unaware of any instances where there were difficulties that could not be worked out. We are proud that our hospitals promptly and efficiently deliver records when we receive an appropriate request to do so.
- III. Senate Bill 88 Contains a Number of Provisions with which Compliance would be Complicated and Difficult.
- A. Senate Bill 88 is Unclear about who can have Access to the Records. Senate Bill 88 appears to create two classes of individuals (other than the patient himself or herself) who are entitled to have access to the medical and billing records covered by the Bill. First, a "representative of a patient" is entitled to the records. A representative is defined, in sequence, as:
- (1) a parent of a minor child patient;
 - (2) a spouse, child or parent of a patient who is not competent;
 - (3) the guardian or conservator of a patient;
 - (4) an heir of a deceased patient or an executor, administrator or other representative of a deceased patient's estate; or

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- (5) an attorney or other person designated in writing by a patient or by a representative of a patient;

Pursuant to federal law, a parent of a minor child patient is not always entitled to the records of the minor. Thus, subsection (1) is in conflict with federal law.

Subsection 2 is particularly mischievous and complicated. How are we to know whether a patient is incompetent, if no finding thereof is required? Frequently, patients and their spouses and children can differ about the level of competence of the patient. Are the records to be available to each of the spouse, children and parents? May multiple requests be made? What if the patient has previously indicated that he or she does not believe that the spouse or child should have access to the records? What if the patient has previously executed a Health Care Directive or a Durable Power for Medical Care that conflicts with the then expressed wishes of the child, parent or spouse? Various accreditation bodies require that a patient be given the opportunity to sign a Durable Power of Health Care Directive to cover exactly the types of matters covered by Senate Bill 88. Permitting a duel between previously expressed wishes of the patient and subsequent wishes of his children is designed to make the work of health care providers significantly more difficult. At a minimum, the statutory scheme envisioned by Senate Bill 88 would permit the clearly expressed wishes of the patient to be overcome by a simple request.

This becomes even more troubling because each person who is designated a patient representative can “authorize” any number of additional people to have access to the records under subsection (d) of the Bill. As we read the bill, a lawyer (“or other person”) designated in writing by the patient or by a representative of the patient becomes thereby a representative of the patient. This is a circular definition. If read literally, and as discussed below, the definition potentially and greatly expands the number and category of people who may have access to the records.

B. The Definition of “Authorized Party” Creates Additional Difficulties.

Subsection 1 (d) of the Bill provides that any of the parties which is a “representative of the patient” under subsection 1(c) may authorize any other person to receive the records. This section has no limitations. Carried to its logical end, the child of an allegedly incompetent patient could authorize an attorney who could authorize a person in the attorney’s office who could authorize his or her son or daughter to go obtain records of the patient. Each of these people could in fact be a “representative of the patient” under subsection 1(c)(5) of the Bill. This circuitous expansion of access is so contrary to established considerations of patient privacy that no patient, much less a provider, should be forced to suffer it.

As the examples in A and B above show, a health care provider would be required to provide records at its peril to those who might be far removed from the person whom the patient actually authorized to receive the documents. This is inconsistent with good patient care, inconsistent with ensuring the privacy of patient records and inconsistent with effective hospital operations.

IV. Senate Bill is Inconsistent with the provisions of HIPAA and other Applicable Laws.

- A. Through rules promulgated under HIPAA (Health Insurance Portability and Accessibility Act) the United States Department of Health and Human Services has created a detailed and complex set of rules protecting patient privacy. The final published HIPAA rules would preempt inconsistent state laws. Thus, it is likely that much if not all of Senate Bill 88, even if enacted into law, would be preempted by Federal law.
- B. At a minimum, enactment of this Bill at this time would create multiple sets of requirements for providers. Specific examples of the conflicting provisions abound, since the federal set of rules runs to many hundreds of pages. For example, Senate Bill 88 (1) greatly expands the categories of individuals to whom access would have to be given; (2) deals not at all with the very restrictive rules in HIPAA dealing with the type of information that must be provided to a patient at the time that he or she consents to use or disclosure; (3) has a very different definition of personal representative than is contained in HIPAA; and (4) does not limit the purposes for which disclosure may be authorized, as is done in HIPAA.
- C. Similarly, Senate Bill 88 could conflict with established rules governing peer review. Under principles established in statute and by the courts, certain information about care delivered to patients is absolutely privileged from disclosure. This privilege is based on the admitted need for providers to be able to report and deal with problems without having the reports and subsequent action under the microscope of review by counsel and others. The privilege promotes prompt reporting and remedial action. The definition of medical records in Senate Bill 88 is sufficiently broad that peer review records could be deemed to be within its reach. Requiring that all peer review reports be provided to patients and their counsel would undoubtedly chill the entire peer review process, to the ultimate detriment of patients throughout Kansas.

V. For those Health Care Providers with Operations in Kansas and Missouri, Senate Bill 88 Unnecessarily Creates Varying Standards for Delivery of Medical Records to Patients.

Health Midwest provides health care services to patients on both the Kansas and the Missouri sides of the state line. In Missouri, access to records is covered by Section 191.227 R.S. Mo. That law provides, in three sections, (a) that a patient or legally authorized representative of a patient has access to his or her medical record within a reasonable time for a reasonable access charge; (b) that the provider may charge more for the reasonable cost of duplications of medical records which cannot routinely be copied on standard commercial photocopy machines; and (c) the provider is not liable for transfer of a patient record done in good faith. Health Midwest hospitals have operated under this law for some time and there are simply not the types of complaints and difficulties that the proponents of SB 88 seem to be attempting to address.

VI. Conclusion.

Thousands of providers throughout the State of Kansas routinely make records available to patients every day. Providers recognize that a patient and a legally authorized representative of the patient should be given access to the record within a reasonable time at a reasonable price. Senate Bill 88 would vastly expand the identity of the people to whom the records must be made available, would conflict with federal rules by which it will be preempted and would conflict with and change time honored principles governing access to records, and the peer review privilege, to name just a few. As such, it would create great difficulties, costs and legal risks for health care providers. Health Midwest opposes the Bill.

The Substitute Bill proposed by the KMS is a reasonable approach that guarantees access at a reasonable price within a reasonable time. The KMS bill is consistent with the federal regulatory scheme and does not conflict with peer review privileges. Health Midwest supports the KMS Substitute Bill.

We thank you for the opportunity to testify and to present these written materials.

Missouri Revised Statutes

Chapter 191 Health and Welfare Section 191.227

August 28, 2000

Medical records to be released to patient, when, exception--fee permitted, amount--liability of provider limited.

191.227. 1. All physicians, chiropractors, hospitals, dentists, and other duly licensed practitioners in this state, herein called "providers", shall, upon written request of a patient, or guardian or legally authorized representative of a patient, furnish a copy of his record of that patient's health history and treatment rendered to the person submitting a written request, except that such right shall be limited to access consistent with the patient's condition and sound therapeutic treatment as determined by the provider. Beginning August 28, 1994, such record shall be furnished within a reasonable time of the receipt of the request therefor and upon payment of a handling fee of fifteen dollars plus a fee of thirty-five cents per page for copies of documents made on a standard photocopy machine.

2. Notwithstanding provisions of this section to the contrary, providers may charge for the reasonable cost of all duplications of medical record material or information which cannot routinely be copied or duplicated on a standard commercial photocopy machine.

3. The transfer of the patient's record done in good faith shall not render the provider liable to the patient or any other person for any consequences which resulted or may result from disclosure of the patient's record as required by this section.

(L. 1988 H.B. 925 § 1, A.L. 1994 H.B. 1427)

CROSS REFERENCE: Child's medical records to be released to parents, attorney's fees and costs assessed, when, RSMo 452.075



Missouri General Assembly

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March 12, 2001

To: The Honorable Senator John Vratil, Chairman of the Senate Judiciary Committee and Committee Members

From: Nikki Adams, RHIT, Representative of the Kansas Health Information Management Association (KHIMA).

RE: Kansas Senate Bill 88

KHIMA is opposed to Senate Bill 88.

I am Nikki Adams and I represent the Kansas Health Information Management Association (KHIMA) with over 700 members in Kansas. We have many issues with SB 88; however, I will address only four at this time.

A PATIENT'S MEDICAL INFORMATION IS CONFIDENTIAL

1. One of our primary responsibilities as health care professionals is to protect the confidentiality of your medical information. SB 88 would allow the patient or their representative access to the patient's medical information. The patient or their representative already has this right as provided by the Kansas Department of Health and Environment and the Board of Healing Arts. Under SB 88 the definition of "Representative of a patient" and "Authorized party" is very broad and there are many instances where these representatives would currently not be allowed access. One thing we don't want to see is an unauthorized "representative" or "authorized party" having access to a patient's medical information. Example: A parent of a minor child patient may not be the custodial parent as in a divorce situation. Also, it appears that under SB 88 a representative could appoint another representative and that representative could appoint an authorized party. We want to ensure that the patient knows exactly who is accessing their medical information. We will all be required to provide the patient notification of who has accessed their medical information under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

CORRECTIONS AND AUTHENTICATION OF MEDICAL INFORMATION

2. We are concerned with Section 4 of the Bill that states that the patient's medical information may not be altered or additions or deletions recorded except for additional contemporaneous entries or corrections. In the normal course of business, preliminary reports such as the dictation of the radiologist, pathologists, and physicians of record are all reviewed and corrected by the dictating physicians before they are signed and dated. We don't believe that SB 88 really wants to remove this verification process.

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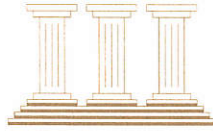
THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

3. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is very complex and deals with all aspects of medical record keeping. Senate Bill 88 conflicts with HIPAA in many areas and the federal law will pre-empt any conflicting state law unless the state law is more stringent. An example of this: HIPAA privacy standards require health care providers to provide patients access to their health information except under very limited and specific circumstances. SB 88 allows information to be withheld if there is a "significant risk of harm" to the patient. This is a less stringent standard than HIPAA. Also, under HIPAA patients can request restrictions of uses and disclosures of their health information and SB 88 does not provide for this. These are just a couple of examples where HIPAA will pre-empt SB 88. Our question is why enact state legislation that is in obvious conflict with HIPAA.

MEDICAL RECORD COPY COST

4. We are concerned with Section 4 of SB 88 regarding the charge that will be allowed for copying health care records. The Workers' Compensation Fee Schedule was established for proceedings that are highly regulated with administrative law judges resolving disputes. There is no allowance for yearly Consumer Price Index (CPI) increases. The Workers' Compensation Fee Schedule would cover the cost of copying medical records if it was like Kinko's where you provide the papers and they make the copies. In Health Information the process is much more complex. The request is reviewed to identify the patient and what information is needed. This may require additional correspondence with the requester. Then the request is evaluated by a trained professional or person trained specifically to assure all the legal requirements have been met and that the medical information requested is complete. The cost includes the labor to retrieve the medical information from whatever medium or site of storage, copy multi size forms front and back (a very manual process), re-assemble and file the record, and the postage necessary to mail. Also, included in the cost is the paper, envelope, staples, copy machine and toner and I could go on and on with space, etc. KHIMA's last copy cost survey was completed in 1997 and indicated that we need \$1.57 per page to break even on cost. Attorney requests for medical records usually require a complete copy of all medical records for the patient and thus many copies are made. We average 84 pages per request for attorneys at our facility. Workers' Compensation Fee Schedule will pay \$36.90 for 84 pages compared to \$131.88 at \$1.57 per page. At this rate the provider will subsidize roughly \$95.00 which ultimately drives up the cost of health care.

Thank you for your consideration of our request to oppose Senate Bill 88.



KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

TO: Members of the Senate Judiciary Committee

FROM: James R Howell
Kansas Trial Lawyers Association

RE: 2001 SB 88

DATE: March 14, 2001

Chairman Vratil and members of the Senate Judiciary Committee, thank you for the opportunity to submit my comments in support of Senate Bill 88. I regret that I'm not able to appear before you in person, but appreciate your consideration of my written comments.

In recognition of frequent disputes between lawyers and physicians in handling personal injury cases, the Wichita Bar Association's Medical Legal Committee and the Medical Society of Sedgwick County met and drafted what is now known as the Sedgwick County Medical Legal Code. The Code gained final approval from both organizations in 1991 and continues in use today. At the present time, the Code represents a voluntary agreement between the lawyers and judges who are members of the Wichita Bar Association and the 800-plus physicians who are members of the Medical Society of Sedgwick County.

Of particular significance to the proposal now before the Senate Judiciary Committee is the fact that the Code was drafted with specific provisions covering the production of medical records. These provisions were adopted in response to frequent problems that arose with respect to the requisition, processing, copying and production of medical records of injured patients. These problems included: identifying persons authorized to request records on behalf of the patient (lawyers, decedent's spouses and heirs, parents of children, representatives of the incompetent or totally disabled); delays in processing and production; unreasonable charges for costs of processing and reproduction; and completeness of medical records.

Many of these provisions are particularly relevant to what has been proposed in SB 88. The following are worth noting:

Section 1.2 Waiver. The privilege (physician/patient communications) is waived by the patient, his guardian, or the personal representative of a decedent by giving a written patient authorization or on the issuance of a court order, subject to any limitations in the authorization or court order and any prohibitions by law.

Terry Humphrey, Executive Director

Jayhawk Tower • 700 SW Jackson, Suite 706 • Topeka, Kansas 66603-3758 • 785.232.7756 • Fax 785.232.7730

E-Mail: triallaw@ink.org

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Section 1.4 Production of medical record. When a request is made for medical records or a medical chart, the physician shall produce the entire file of the patient which file shall include all documents relating to the patient, whether located in the medical chart or elsewhere, regardless of the nature or source of the document, unless such production is specifically prohibited by law. If any portion of the medical record or chart is not produced, the physician shall disclose that fact and the type of information not produced to the person making the request.

Section 1.5 Avoidance of disclosure to patient. In circumstances where a disclosure of medical facts to the patient may be injurious to his physical or mental welfare, the physician and attorney are obligated to cooperate and to avoid, if possible, disclosures to the patient which may result in injury.

Appendix B Reproduction of Physician Medical Records

Charges for reproduction of medical records:

Basic Service Charge\$15.00 plus
Records Stored in Salt MinesActual Retrieval Fee plus
Per Page Copy30 cents/page

A physician may make arrangements directly with an outside firm to reproduce the record.

Once approved and disseminated among the respective memberships, the majority of the problems previously encountered diminished. Occasional problems continued to occur, but were generally resolved by the informal dispute resolution process outlined in the Code. Isolated cases required court intervention.

Over the past several years, there has been a resurgence of problems. It is respectfully suggested that the etiology of these problems can be traced to undefined terms used in the language of the Code and a growing public concern over patient confidentiality. These problems include: ensuring the patient's personal or legal representative is authorized to request records on behalf of the patient, timeliness of production, and ensuring that a "complete and unedited" medical record is produced.

In an effort to resolve the recurrence, the Wichita Bar Association Medical Legal Committee decided to explore the problems and propose amendments to the existing Code. A proposed medical authorization form and amendments to the existing Code were drafted and forwarded to the Medical Society of Sedgwick County for its consideration. The proposals were discussed at a joint meeting with little opposition. Changes were made based on the suggestions of the Medical Society. Copies of the proposed Medical Authorization and amendments are attached for reference.

Efforts to finalize the adoption of the standardized authorization form and amendments have been temporarily suspended due to the introduction of SB 88. At the time SB 88 was introduced, the only question raised by the Medical Society was whether anything proposed in the authorization or amendments conflicted with the recent amendments to HIPAA.

It is respectfully suggested that the implementation of the Sedgwick County Medical Legal Code in 1991 was instrumental in providing guidance and resolving frequent problems involving the request and production of medical records. As is often the case with any legislative efforts, the passage of time necessitates revision. SB 88 incorporates the Medical Legal Committee's suggested revisions to the Code. As such, the Committee believes that SB 88 would effectively resolve the resurgence of problems if not virtually eliminate them.

The significance of all of this lies in the fact that legislative efforts at the local level on the very same issues now proposed for statewide legislation resolved significant problems involving patient access to medical records. The Code did not meet with strong opposition. Rather it was welcomed by both organizations. While it is surprising that health care providers are so vehemently opposed to similar legislative efforts is surprising, there is no reason to believe that statewide legislation would not accomplish the same goals achieved by the efforts of those who practice law and medicine in Sedgwick County.

PROBLEMS IN OBTAINING MEDICAL RECORDS FOR CLIENT

A couple of years ago, the issue of accessing medical records was discussed at a meeting of the Wichita Bar Association's Medical Legal Committee. What was of particular interest to the Committee was complaints among the membership about acquiring medical records. There was a consensus among members that both plaintiff and defense counsel were having problems obtaining medical records. These concerns were explored informally through contact with personal injury lawyers and their staff in an effort to discover what specific problems were occurring. The committee found several complaints to be widespread.

At the top of the list was incomplete records. It is quite common to request a medical record from a physician and receive only a portion of the records contained in the file. Correspondence with referring physicians, hospital notes, patient call slips and other patient care information was routinely not produced. This was true even though cover letters that accompanied the signed patient authorization specifically detailed everything that would be customarily found in the patient's medical record.

In Sedgwick County it is not uncommon to request a complete copy of the patient's record only to find at the deposition of the physician that his original office chart is twice as thick and contains twice as much information than what was produced in response to a patient request. This problem continues to plague both plaintiff and defense lawyers who practice in the personal injury arena. The problem is not by any means particular to

lawyers. Often our clients are asked to obtain their medical records and bring them to us. What we commonly find to be true is that they get even less of the chart than we do. We soon discovered that many physician group decided to take it upon themselves to select what portions of the medical records they would provide notwithstanding a request for the "complete" record.

Second on the list is timeliness. This is especially true when the records are requested on behalf of a patient by his/her lawyer. In Sedgwick County is not uncommon to wait months to get medical records from health care providers. In fact, there have been a number of instances where an examination of the original medical record at a deposition has shown that upon receipt of the request by the patients attorney for medical records an entry is found evidencing that a an unauthorized copy of the medical records was sent to the health care providers insurance carrier long before they were sent to the patient's lawyer.

The fact of the matter is that there is no legal requirement that health care providers satisfy a patient's request within a certain period of time. The third problem identified dealt with who was authorized to obtain medical records on behalf of the patient. There are often instances where the patient is unable to sign a release due to age, infirmity, competence or death. In those instances, the request is made by a personal representative such as an heir, parent of a minor child, or an adult child of an incompetent or disabled family member. These representatives have met with considerable difficulty in obtaining medical records. There is very little guidance in current law on the issue of who is or should be authorized to make requests on behalf of a patient who cannot execute and authorization. While there are specific laws that set forth elaborate procedures for the court appointment of fiduciaries to act on behalf of minors, the incompetent, disabled and deceased, they are fraught with expense and delay.

For example, if a parent is killed in an auto accident and the surviving spouse wishes to obtain a copy of the spouses medical records for purposes of evaluating a personal injury case or possible future litigation, the spouse would have to file a probate action to seek formal appointment as a court appointed fiduciary just to obtain a copy of her deceased spouse's medical records. The same is true if a person is injured in an auto case and rendered totally disabled or incompetent. In either case, the expense and delay is considerable given the task to be accomplished. The fact of the matter is that in these types of cases, rarely does anyone seek formal appointment. They assume the responsibility to care for the patient because of their familial relationship. This has been a problem for a long time and legislation is needed to address it.

Fourth, there has been a perpetual problem with the charges of health care providers for obtaining copies of records. Other than cases involving injuries at the workplace, there is no limit on what health care providers may charge to produce copies of medical records. It is not uncommon to be charged anywhere from .50 to \$1.00 per page with \$25.00 to \$50 administrative costs. There have been instances where attorney have been charged as much as \$50 for a few records. There have also been instances where clients have been

asked to gather medical billing records only to be turned away and told that they will need a lawyer to help them get the records. There simply is no consistency and there is a sore need for control of these costs.

It is important to note that these problems continue to exist notwithstanding the fact that there are statutory penalties that may be invoked if a health care provider fails to provide a patient access to his medical records. K.A.R.100-22-1 Release of Records specifically provides that:

(a) Unless otherwise prohibited by law, each licensee shall, upon receipt of a signed release from a patient, furnish a copy of the patient record to the patient, to another licensee designated by the patient, or to the patient's legally designated representative. However, if the licensee reasonably determines that the information within the patient record is detrimental to the mental and physical health of the patient, then the licensee may withhold the record from the patient and furnish the record to another licensee designated by the patient.

(b) A licensee may charge a person or entity for reasonable costs to retrieve or reproduce a patient record. A licensee shall not condition the furnishing of a patient record to another licensee upon prepayment of these costs.

(c) Any departure from this regulation shall constitute prima facie evidence of dishonorable conduct pursuant to K.S.A. 65-2836(b), and any amendments thereto.

This provision is no substitute for definitive legislation allowing patient access to records. The statute merely provides for disciplinary action in the event a health care provider does not comply with a patient's request. In order for action to be taken, the failure must be reported, investigated and an administrative order issued to punish the wrongdoer. While the requirement of producing medical records upon the request of the patient is complimentary to SB 88, it does not address the problems previously discussed. It merely reflects what a physician has an ethical obligation to do.

In closing, these are real problems. They are not isolated instances. The clear way to alleviate these problems is to pass legislation that will put all on notice of what is expected and if there is noncompliance, to afford an avenue for redress. Absent legislation, the likelihood of these problems continues and records will be produced on a voluntary basis in the sole discretion and manner dictated by the health care providers who are the custodian of the records.

Thank you for the opportunity to comment on SB 88 and would be happy to answer questions that members of the committee may have. I urge your support of SB 88.

AUTHORIZATION AND REQUEST FOR MEDICAL INFORMATION

[Note: Release of substance abuse, mental health information or HIV status requires a separate authorization]

TO: _____

PATIENT: _____
DATE OF BIRTH: _____
SSN: _____

I hereby authorize you to provide and disclose to _____ the following information: [Please notify the requester within 10 days if prepayment is required or if more than 30 days are needed to comply with this request by calling _____ at _____.]

- Complete Medical Records (See definition below)
 - Please include all Secondary Records (See definition below)
- Updated Medical Records from _____ to _____
 - Please include all Secondary Records (See definition below)
- Itemized Billing Statement listing all charges for services rendered from _____ to _____
- Radiographic Films, including x-rays, MRIs, CT scans, IVPs, myelograms, sonograms, ultrasound, etc., taken on or after _____. Specific type of record requested: _____
- Photographs or Video Tapes taken on or after _____
- Special Requests/Instructions: _____
- Attorney Conference and/or Report

For purposes of this authorization and release, the term "Medical Records" includes all records pertaining to the examination, diagnosis, care and treatment of the patient, including but not limited to: patient intake and registration forms; patient insurance and identification information; patient questionnaires; phone message slips; office narratives; progress notes; prescription orders; lab results; nurse and physician assistant notes; consultation reports; order sheets; correspondence with patient; handwritten notes; and, radiological and laboratory reports.

For purposes of this authorization and release, the term "Secondary Records" includes all documents contained in the patient's office chart from other health care providers, insurance representatives; attorneys or governmental agencies, including but not limited to: medical records as defined above and all correspondence and hospitalization records.

If requested, you are authorized to meet and consult with the above-named party concerning any aspect of my medical condition and furnish oral and/or written reports.

I understand that these records are protected by state and federal law and cannot be disclosed without my written consent unless otherwise provided for by law and that I may revoke this consent at any time.

I further understand that there may be reasonable charges to me associated with complying with the requests herein and that I am responsible for payment of those charges.

This authorization shall remain in full force and effect until I revoke it in writing or until it expires as specifically provided herein. A photocopy of this authorization shall have the same force and effect as the original.

Executed this _____ day of _____, 20_____.

Patient's Signature

Authorized Signature for:

Minor Decedent Disabled Person

Printed name of patient

Printed Name and Representative Capacity

Witness [optional]

If this Authorization is to be limited, restricted or revoked in any way, please indicate the date, event or condition upon which it expires or is otherwise limited: _____

Prohibition on redisclosure: This information has been disclosed to you from records whose confidentiality is protected by federal law. Federal regulations (42 CFR part 2) prohibit you from making any further disclosure of this information except with the specific written consent of the person to whom it pertains. A general authorization for the release of medical or other information if held by another party is not sufficient for this purpose. Federal regulations state that any person who violates any provision of this law shall be fined not more than \$500, in the case of a first offense, and not more than \$5,000 in the case of each subsequent offense.

AFFIDAVIT

STATE OF KANSAS)
) SS:
_____ COUNTY)

I, _____, being first duly sworn, on my oath depose and state as follows:

1. I am over the age of 18 years.
2. My legal address is _____
3. I am
 - the duly appointed Executor of the Estate of _____
 - the duly appointed Administrator(trix) of the Estate of _____
 - conservator of _____
 - guardian of _____
 - personal representative of the estate of _____
because no court proceeding is necessary or been commenced to administer the estate of _____
4. I am requesting records on behalf of _____
and affirm that I shall not disclose said records to any third party other than those authorized to receive said records as a matter of law or as said person may so direct.

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 20__

Notary Public

My Appointment Expires:

Proposed Changes and Additions to the Medical/Legal Code

SECTION 1 PRIVILEGE

1.4 When a general request is made for a patient's medical records, the physician shall produce the entire file on the patient, whether located in the medical chart or elsewhere, regardless of the nature or source of the document unless specifically prohibited by law.

1.6 For purposes of this section, the phrase "medical record" shall include all records of treatment, including but not limited to: patient intake and registration forms; patient and insurance identification information; patient questionnaires; phone message slips; office narratives; progress notes; prescription orders; lab results; nurses or physician assistant notes; consultation reports; order sheets; correspondence with patient; handwritten notes; and radiological and laboratory reports. The phrase shall not include the following records unless specific authorization and request is made by the patient:

- a. Substance abuse or mental health care;
- b. Copies of diagnostic films or fetal monitor strips;
- c. HIV testing;
- d. Records obtained from other health care providers or governmental agencies;
- e. Correspondence received from or sent to others including, but not limited to: other health care providers; attorneys; the patient; health insurers; social security agencies; and Medicare or Medicaid agencies;
- f. Billing statements;
- g. Photographs and videos; and

1.7 For purposes of simplifying and expediting records requests, the Wichita Bar Association and the Medical Society of Sedgwick County have approved an authorization form which is included in the index of forms to this Code. Due to additional statutory protections afforded patients undergoing HIV testing or care and treatment for substance abuse or mental illness, the authorization is not approved for use to request records reflecting said testing, evaluation or care without specific request and authorization as provided by law.

1.8 If the patient is deceased, disabled or mentally incompetent, the patient's legal or personal representative may request medical records on behalf of the patient by executing an affidavit attesting to the patient's death or disability and identifying the nature of the relationship between the patient and the requesting person. A suggested affidavit form is included in the appendix to this code.

1.9 Upon receiving a request for medical records, the physician shall furnish a copy of the requested records not later than thirty (30) days after the request has been received. If the physician does not have any records meeting the substance of the request or does not maintain the requested records because of a transfer of the records to another physician, the physician shall take reasonable steps to notify the patient in writing of the fact and reason for the records

unavailability. If it is not possible to process the records request within the time period set forth herein due to a need for prepayment, the records voluminous nature or other reason, the physician shall take reasonable steps to notify the patient of the circumstances causing the delay within 10 days of receipt of the request.

CROSS REFERENCE CHART FOR SB 88

SB 88	HIPAA	OTHER	COMMENT
SB 88 Section 1(a) Defines "health care provider"	160.103 Definitions Defines "health care provider"	K.S.A 40-3401 7-121(b) Define "health care provider"	Section 160.103 defines "health care provider" as a provider of services, a provider of medical or health services [as defined in 42 USC 1395x(u)] and any other person or organization who furnishes, bills or is paid for health care in the normal course of business. [Note that "Health Plan" is also covered under the Act which includes HMOS.] All persons and entities listed in SB 88's definition are referenced as health care providers under K.S.A. 40-3401 or K.S.A. 7-121(b). All these persons or entities would fall under the broad definition of "health care provider" under HIPAA.
SB 88 Section 1(b) Defines "patient"	160.501 Definitions Defines "individual"		Section 164.501 defines "individual" as the person who is the subject of protected health information. Section 164.502 references an "individual" as a person to whom protected health information may be disclosed. A "patient" as defined in SB 88 would be the person who is the subject of protected health care information as defined in HIPAA.

<p>SB 88 Section 1(c)</p> <p>Defines "representative of patient"</p>	<p>164.502(f)&(g) 160.201 164.510</p> <p>Disclosure of Protected Health Information to representatives</p>	<p>Section 164.502(f) provides that the health care provider must comply with the requirements of 164.502 with respect to deceased individuals. 164.502(g)(1) provides that the health care provider must treat a personal representative as the "individual". Subsection (2) provides that the health care provider must treat a person who under applicable law has the authority to act on behalf of an individual who is an adult or an emancipated minor in making decisions related to health care as a personal representative. Subsection (3) provides that the health care provider must treat a parent, guardian or other person acting in <i>loco parentis</i> as a personal representative of an unemancipated minor if under applicable law that person has the authority to make medical decisions related to the minor's health care. Subsection (4) provides the health care provider must treat an executor, administrator or other person having authority under applicable law to act on behalf of a deceased individual or the individual's estate, as a personal representative. (See <i>Burroughs v. Shawnee County Coroner</i>, 23 Kan. App. 2d 769 (1997) - surviving spouse is a personal representative with authority to obtain decedent's medical records)</p> <p>Section 160.201 on preemption of law notes that nothing in the act should be construed to preempt any state law to the extent that it authorizes or prohibits the disclosure of protected health information about a minor to a parent, guardian or person acting in <i>loco parentis</i> of a minor. Section 164.510 permits the health care provider to disclose the protected health care information to a family member, other relative or a close personal friend or any other person identified by the patient if the patient agrees.</p>
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<p>SB 88 Section 1(d) Written Authorizations</p>	<p>164.508 164.522 164.524 Authorizations</p>		<p>Section 164.508 requires an authorization for disclosure. The provision provides that when a health care provider receives a valid authorization for release of information, the requested disclosure must be consistent with the authorization. HIPAA does not mandate the use of written authorizations. The health care provider may require the patient to make the request in writing provided the patient is informed of a such a requirement. SB 88 provides broader protection for health care providers by requiring written authorization made under oath or affirmation.</p> <p>Section 164.508(b)(2) sets out conditions when an authorization is defective.</p> <p>Section 164.508(c)(1) sets forth the core elements that an authorization must contain to be valid (these have been incorporated in our proposed amendment).</p> <p>Section 164.508(b)(5) provides that an individual may revoke an authorization at any time provided it is in writing (subject to reasonable reliance by entity to date of revocation).</p> <p>Section 164.524(c) provides that the requested information must be provided in the form or format requested by the patient if it is readily producible in such form or format or if not, in a readable hard copy form or such form as may be mutually agreed upon. If the request seeks access for inspection or copying, arrangements must be made within the time frames set forth in the section.</p> <p>Section 164.522(a)(2) allows a health care provider to require a statement that disclosure of all or part of the information to which the request pertains could endanger the patient.</p>
<p>SB 88 Section 1(e) Defines "health care"</p>	<p>160.103 Definitions Defines "health care"</p>		<p>Section 160.103 defines "health care" as care, services or supplies related to the health of an individual including, but not limited to: preventative, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, and counseling, service, assessment, or procedure with respect to the physical or mental condition [includes psychotherapy notes under 164.508(a)(2)] or functional status of an individual or that affects the structure or function of the body; and, the sale or dispensing of a drug, device, equipment or other item in accordance with a prescription.</p>

<p>SB 88 Section 1(f)</p> <p>Defines "health care records"</p>	<p>160.103 Definitions</p> <p>Defines "health information"</p> <p>164.501</p> <p>Defines "record"; "protected health information", and "payment"</p>	<p>Section 160.103 defines "health information" as any information, whether oral or recorded in any form or medium, that: is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse and relates to the past, present or future physical or mental health or condition of an individual. [Note: 164.501(a)(2) provides that psychotherapy notes may be obtained provided the health care provider receives a valid authorization from the patient.]</p> <p>Section 164.501 defines "records" as the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for a health plan or used in whole or in part by or for the covered entity to make decisions about individuals; and, any item, collection, or grouping of information that includes protected health information and is maintained, collected, used or disseminated by or for a covered entity.</p> <p>Section 164.501 defines "protected health information" to include not only information transmitted by electronic media but also "transmitted or maintained in any other form or medium."</p> <p>Section 164.501 defines "payment" as activities undertaken by a health care provider or health plan to obtain or provide reimbursement for the provision of health care (a laundry list follows).</p>
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<p>SB 88 Section 2(a)</p> <p>Right to Request Information</p> <p>Duties Upon Obtaining Records</p>	<p>164.502</p> <p>General Rules on Disclosure</p> <p>164.522</p> <p>164.524</p> <p>164.528</p> <p>Access to Protected Health Information</p> <p>164.524</p> <p>Access and Denial</p>		<p>Section 164.502(2) provides that a health care provider is "required" to disclose protected health information to an individual when requested (under 164.524 or 164.528).</p> <p>Section 164.524 and 164.528 provide the general rules for patient access to health care information. They provide that an individual has a right of access to inspect and obtain a copy of protected health information in a designated record set for as long as the protected health information is maintained - there are several exceptions; psychotherapy notes (requires written authorization); information compiled in reasonable anticipation of, or use in, a civil, criminal or administrative action or proceeding; information subject to the Clinical Laboratory Improvements Amendments of 1988 42 USC 263 and 493; in cases where the information may jeopardize the health, safety, security of others at a correctional institution; information subject to the Privacy Act 5 USC 552a; information received from someone other than a health care provider under promise of confidentiality that would likely reveal the source of the information; certain research activities; or, a licensed health care professional has determined the disclosure is reasonably likely to cause substantial harm to the patient or another person.</p> <p>Section 164.522(a)(2) prohibits a health care provider from requiring an explanation from the patient as to the basis for the request as a condition of producing the records.</p> <p>Section 164.524(d) provides that the health care provider must make the health information accessible to the fullest extent possible. Any denial must be timely made and in writing. If the information is maintained by another and the health care provider knows where it is maintained, it must inform the patient where to direct the request for access.</p>
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<p>SB 88 Section 2(b)</p> <p>Time Requirements</p>	<p>164.524(b)</p> <p>Deadlines</p>		<p>Section 164.524(b) sets forth the implementation specifications for requests and timely action. The health care provider must act on the request for access no later than 30 days after receipt of the request as follows: if the request is granted, in whole or part, the patient must be informed of the acceptance of the request and provide the access requested; if the request is denied in whole or part, it must provide the patient with written denial. If the records are kept off-site, the health care provider must take action within 60 days of receipt of the request. If neither of these deadlines can be met, the health care provider may extend the time one time by no more than 30 days provided the patient has been provided with a written statement setting forth the reasons for the delay and the date by which the request will be satisfied.</p>
<p>SB 88 Section 3</p> <p>Limitations on authorization</p>	<p>164.532 164.508</p>		<p>Section 164.532 provides that a health care provider may not disclose health care information pursuant to an authorization from an individual that does not comply with 164.506 or 164.508.</p> <p>Section 164.508(e) allows the health care provider to disclose protected health information in the course of any judicial or administrative proceeding: in response to an order of a court or administrative tribunal (only to the extent authorized by the order); or in response to a subpoena, discovery request or other lawful process that is not accompanied by such order if the entity receives satisfactory assurance from the party seeking the information that efforts have been made to ensure the patient has been given notice or there have been reasonable efforts made to obtain a qualified protective order. HIPAA further sets forth in this section other permissible disclosures, e.g. law enforcement, victims of crimes, reporting crimes in emergencies, to allow coroners and funeral directors to carry out their duties, research protocols, avoid serious threat to health or safety, military and veteran activities, national security and intelligence activities, etc.</p>
<p>SB 88 Section 4(a)</p> <p>Cap on Fees</p>	<p>164.524</p> <p>Fees</p>		<p>Section 164.524(c)(4) provides that if the patient requests a copy of protected health information or agrees to a summary or explanation of such information, the health care provider may impose a "reasonable, cost-based fee, provided that the fee includes only the cost of: copying, including the cost of supplies for and labor of copying; postage; and, the cost of preparing an explanation or summary of the protected health care information if agreed to by the patient.</p>

<p>SB 88 Section 4(b)</p> <p>Advance Payment</p>	<p>164.522</p>		<p>Section 164.522(a)(2) allows a health care provider to condition the production of records on how payment, if any, will be handled.</p>
<p>SB 88 Section 5(a) & (b)</p> <p>No Production If Cause Harm</p> <p>Denial of Access</p>	<p>164.524</p> <p>Endanger Patient or Others</p> <p>Denial of Access</p>		<p>Section 164.524(a)(3) sets forth the circumstances wherein a denial of access may be made by the health care provider. Generally, denial is appropriate when a licensed health care professional determines in his professional judgment that access would likely endanger the life or physical safety or is likely to cause substantial harm to the individual or another person. Section(a)(4) sets forth patient's rights with respect to a review of a denial of access by a health care provider. Section(d) sets forth the mechanics of denial and review, including notification of the patient.</p>
<p>SB 88 Section 6(a)&(b)</p> <p>Civil Action Provisions</p>			<p>Action under HIPAA is restricted to the Secretary, but nothing in the Act is intended to prohibit a private action.</p> <p>Comments to HIPAA recognize that state laws may provide for a private cause of action against a health care provider.</p>
<p>SB 88 Section 7</p>	<p>160.201</p>		<p>HIPAA is very specific on the issue of preemption under circumstances where the patient is the one requesting health care information. HIPAA allows state laws that are more stringent than HIPAA to stand. "More stringent" is defined in detail to include laws that permit greater rights of access or amendment, provide a greater amount of information about its use, disclosure and the patient's rights or remedies, provides for requirements that narrow the scope or duration, increase the privacy protections afforded or reduce the coercive effect of the circumstances surrounding an authorization or consent.</p>



att 8

Kathleen Sebelius
Commissioner of Insurance
Kansas Insurance Department

March 2, 2001

Terry Humphrey
Kansas Trial Lawyers Association
700 SW Jackson, Suite 706
Topeka, Kansas 66603

Dear Ms. Humphrey:

I have been asked to review Senate Bill 88 to determine whether it conflicts with House Bill 2480 and the NAIC Model Regulation, which House Bill 2480 would allow the Kansas Insurance Department to adopt. It is my initial impression after reviewing Senate Bill 88 that it does not conflict with House Bill 2480 or the NAIC Model Regulation.

Senate Bill 88 and House Bill 2480 deal with complementary but distinct issues. Senate Bill 88 deals with a patient's right to *access* to his medical information; House Bill 2480 deals with, among other things, a patient's right to *privacy* of his medical information. Although it is conceivable that laws of these types could conflict in their details, the intuition behind both is the same: that the patient should have control of his medical information.

It does not appear to me that any of the potential technical conflicts between Senate Bill 88 and House Bill 2480 exist in either bill's current form. The NAIC Model Regulation explicitly allows insurers to release medical information to comply with other state laws. Senate Bill 88, if adopted, would be such a law. It is hard for me to imagine the Kansas Insurance Department punishing an insurer under the NAIC Model Regulation for releasing a patient's medical records to the patient or his representative at the patient's request.

If there is any other information you feel I should receive that would illuminate this issue further, please forward it and I will review the issue again. And please feel free to call me with any questions.

Sincerely yours,

Matthew D. All
Matthew D. All
Assistant Commissioner

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In Jud
3-14-01
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ATTORNEY AT LAW

March 14, 2001

Kansas Trial Lawyers Association
700 S.W. Jackson, Suite 706
Topeka, Kansas 66603-3758

RE: *Patient's Right of Access to Medical Records*

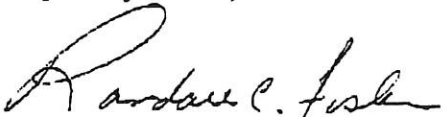
To Whom It May Concern:

I understand the Kansas Legislature is currently considering legislation providing certain rights to patients to access to their medical records.

I currently represent a family whose elderly mother died in a Wichita hospital after she was left unsupervised on two separate occasions and fell, breaking her hip and suffering other severe injuries. When the family came to me, I interviewed them and agreed to investigate the case. On April 20, 2000, I wrote the hospital and made a standard request for the patient's medical records. I never received a response, so on May 23, 2000, I made a second request for these records. On May 25, 2000, I received a letter from the hospital indicating that no records existed on the patient. In fact, at one point the hospital told me "patient not found." I wrote the family and they responded that they thought this was strange given the fact they had just received a summary of the hospital bill for \$84,767.49 and they knew that an autopsy had been performed. I heard nothing more from the hospital until March 8, 2001, when 101 pages of the hospital records showed up in the mail in response to my request for records made a year earlier. I have no idea where those records have been for the past year. After a year delay, I am now beginning the process of having the records reviewed to determine what happened to the patient.

Thank you for your attention in this matter.

Very Truly Yours,


Randall E. Fisher

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LAW OFFICES
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 ATTORNEY AT LAW

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 DODGE CITY, KANSAS 67801
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KTLA Legislative Update
 Jayhawk Tower, 700 S.W. Jackson
 Suite 706
 Topeka, Kansas 66603

To Whom It May Concern:

We are very glad to contribute with some of our problems in obtaining medical records. To begin with K. U. Medical Center and Occupational Medicine are the worst in replying to our requests. We are constantly forced to call them again and again for their medical records. We have cases where we have called for four to six months and up to a year for medical records. We have had several cases where they have called us on the phone and asked us if we still need particular medical records when the case has settled several months before.

We have trouble with other health care providers as well. When we call requesting information as to when the records will be sent, as for instance when the client is due to see another doctor soon, they say that payment must be made in advance although they will not always provide us with the amount for the charges. In a case like that, we will request they fax the charges in order to expedite the matter. Even when payment has been made in advance they are almost never willing to fax the medical records although we need them immediately. This is even in cases when there are only one to five pages of medical records.

Last year we had a very hard time getting medical records from KU Medical Center. For about two weeks they claimed that their computers were down. Then they said they were so far behind it was going to take several weeks until they could service our requests for medical records. At another time they said they had made a change in their staff and that it would take a lot of time to get caught up.

Other health care providers claim that all the records are collected through outside companies such as Smart Corporation or Still Corporation and that the matter is simply out of their hands. When they give us the number of their medical records collector we get the runaround from those same companies with excuses as to why the records have not been provided and a myriad of reasons for their delays. We constantly have a problem with medical records been received at the office after the need for them has passed.

There are several doctors and medical clinics that claim they only process medical records one day out of the week and tell you that you are simply out of of lot if you call the day after. They will not even consider making hand exception the matter how urging the need the records.

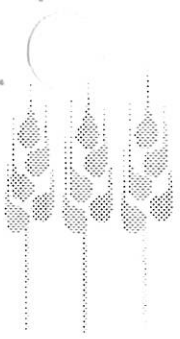
We are also in receipt of various billing statements for these medical records. There is no rhyme or reason to many of these bills. For the most part we do not see them following the medical fee schedule. We assume if we start making a lot of noise about the billings we will be put even further down the list for our medical record requests.

All in all it is a very frustrated enterprise trying to get these medical records even when there requested months in advance. I hope disinformation goods helpful. I wish to successive time to help improve the situation and take this opportunity to thank you in advance for you kind consideration of this matter.

Marlene Nicsinger
 Medical Records Department

Marlene Nicsinger

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 3-14-01
 att 10



Kansas Association of Health Plans

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Topeka, KS 66604

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**Testimony before the
Senate Judiciary Committee
Hearings on SB 88
March 14, 2001**

Chairman Vratil and members of the Committee. Thank you for allowing me to appear before you today. I am Larrie Ann Lower, Executive Director of the Kansas Association of Health Plans (KAHP).

The KAHP is a nonprofit association dedicated to providing the public information on managed care health plans. Members of the KAHP are Kansas licensed health maintenance organizations, preferred provider organizations and others who support managed care. KAHP members serve all of the Kansans enrolled in a Kansas licensed HMO. KAHP members also serve the Kansans enrolled in HealthWave and medicaid HMO's and also many of the Kansans enrolled in PPO's and self insured plans. We appreciate the opportunity to provide comment on Senate Bill 88.

The KAHP opposes this bill for several reasons. This bill would require an HMO to release not only the patients medical records, but also records that have limited or no relation to a patient's care. Examples of these records are: credentialing issues, provider contracts, provider profiling, disease management, etc. In addition, a patient's medical record is not generated by a health plan, we receive our information on a patient from the patient's doctor, hospital or other provider.

The KAHP also questions whether this bill conflicts with the proposed Federal HIPAA regulations regarding privacy of medical records and the NAIC Model Regulations on Privacy of financial and health information of consumers. KAHP is testifying tomorrow before the Senate Financial Institutions and Insurance in support of HB 2480, helping to maintain and strengthen the Privacy of medical records by authorizing the Commissioner of Insurance to adopt the NAIC model regulations. Privacy of medical records has been an important issue to KAHP members, the Insurance Commissioner and members of the Legislature. The bill before this Committee could actually work in direct conflict with the goals of HB 2480.

We therefore request the attached balloon amendment exempting HMO's from the provisions of this bill. We also ask that any further compromise concerning this issue exempt HMO's. We will be happy to continue to work with the interested parties on this issue, however without the KAHP proposed amendment, we strongly oppose this bill. I'll be happy to answer any questions you may have.

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SENATE BILL No. 88

By Committee on Judiciary

1-22

9 AN ACT concerning access to health care records and health care billing
10 records by patients and others.

11

12 *Be it enacted by the Legislature of the State of Kansas:*

13 Section 1. As used in this act:

14 (a) "Health care provider" means a person licensed to practice any
15 branch of the healing arts by the state board of healing arts, a person who
16 holds a temporary permit to practice any branch of the healing arts issued
17 by the state board of healing arts, a person engaged in a postgraduate
18 training program approved by the state board of healing arts, a podiatrist,
19 an optometrist, a pharmacist, a dentist, a physical therapist, a psychiatrist,
20 a psychologist, a licensed professional counselor, a licensed clinical pro-
21 fessional counselor, a licensed master level psychologist, a licensed clinical
22 psychotherapist, a licensed specialist clinical social worker, a baccalau-
23 reate social worker, a master social worker, a specialist social worker, a
24 licensed marriage and family therapist, a nurse practitioner, a nurse anes-
25 thetist, a physician's assistant, a hospital, a medical center or clinic, a
26 medical care facility, an ambulatory surgical center, a health maintenance
27 organization, a psychiatric hospital, a mental health center or mental
28 health clinic or other person or entity providing medical or health care
29 within the State of Kansas;

30 (b) "patient" means a person who receives medical or health care
31 from a health care provider, including but not limited to, any examination,
32 testing, evaluation, diagnosis or treatment of any physical or psychological
33 injury, illness or disorder or any claimed physical or psychological injury,
34 illness or disorder;

35 (c) "representative of a patient" means: (1) A parent of a minor child
36 patient; (2) a spouse, child or parent of a patient who is not competent;
37 (3) the guardian or conservator of a patient; (4) an heir of a deceased
38 patient or an executor, administrator or other representative of a deceased
39 patient's estate; or (5) an attorney or other person designated in writing
40 by a patient or by a representative of a patient;

41 (d) "authorized party" means a person or entity who has been au-
42 thorized by the patient or the patient's representative, or by court order
43 or operation of law, to have access to health care records or health care

1 billing records of the patient for a limited purpose;

2 (e) "health care" means the provision of care, services or supplies to
3 a patient and includes any: (1) Preventive, diagnostic, therapeutic, reha-
4 bilitative, maintenance or palliative care, counseling, service or procedure
5 with respect to the physical or mental condition, or functional status, of
6 a patient or affecting the structure or function of the body; (2) sale or
7 dispensing of a drug, device, equipment or other item pursuant to a pre-
8 scription; or (3) procurement or banking of blood, sperm, organs or any
9 other tissue for a administration to patients;

10 (f) "health care records" means any information, recording, data, pa-
11 pers, records or documents generated or maintained by a health care
12 provider whether in written, photographic, ultrasonographic, fluoro-
13 scopic, microfilm, audiotape, videotape or electronic form concerning
14 medical or health care, treatment or evaluation of the patient, including
15 but not limited to, notes, summaries, reports, forms, films, images, tele-
16 phone orders or messages, x-rays, monitor strips, slides, electronically or
17 computer stored data, printouts and correspondence; and

18 (g) "health care billing records" means any records or information
19 concerning the charges or fees for medical or health care, treatment or
20 evaluation of the patient, or any payments or adjustments thereto, in-
21 cluding but not limited to, billings, ledgers, electronically or computer
22 stored data, printouts and correspondence.

23 Sec. 2. (a) Except as provided in section 5, and amendments thereto,
24 a patient or representative of a patient, upon reasonable notice or request,
25 shall be entitled to inspect and copy any health care records or health
26 care billing records in the possession of a health care provider concerning
27 medical or health care of the patient.

28 (b) Any health care provider who receives a request from a patient
29 or representative of a patient for access to or copies of any health care
30 records or health care billing records, shall provide access to or copies of
31 such records within 10 days after the receipt of such notice or request,
32 or shall notify the patient or representative of the patient making the
33 request within 10 days after the receipt of such notice or request, of the
34 reason why access to or copies of such records is being withheld or de-
35 layed, indicating the date when access to or copies of such records will
36 be provided.

37 Sec. 3. (a) Except as provided in section 5, and amendments thereto,
38 an authorized party, upon reasonable notice or request, shall be entitled
39 to inspect and copy any health care records or health care billing records
40 in the possession of a health care provider concerning medical or health
41 care of the patient, subject to any limitations upon the authorization.

42 (b) Any health care provider who receives a notice or request from
43 an authorized party for access to or copies of any health care records or

1 health care billing records, shall provide access to or copies of such re-
2 cords within 10 days after the receipt of such notice or request, or shall
3 notify the authorized party making the request within 10 days after the
4 receipt of such notice or request of any reason why access to or copies of
5 such records is being withheld or delayed, indicating the date when access
6 to or copies of such records will be provided.

7 (c) An authorized party who has obtained health care records or
8 health care billing records concerning a patient shall, upon notice or re-
9 quest, supply a copy of such records to the patient or representative of
10 the patient.

11 (d) An authorized party who has obtained health care records or
12 health care billing records concerning a patient shall maintain the confi-
13 dentiality of such records and shall not use or release such records except
14 for the purpose for which authorization was given by the patient or rep-
15 resentative of the patient, or in connection with the proceedings for which
16 authorization was given by court order or operation of law.

17 Sec. 4. (a) No charge for retrieving or copying health care records
18 shall exceed the maximum fees allowed under the workers compensation
19 schedule of medical fees issued by the Kansas department of human
20 resources unless the health care provider establishes the reason the re-
21 quested records cannot reasonably be retrieved or copied without addi-
22 tional expense.

23 (b) A health care provider shall be entitled to reimbursement for the
24 reasonable expenses incurred in retrieving and copying health care re-
25 cords, and may demand that such reimbursement be provided in advance
26 of providing access to or copies of such records.

27 (c) A health care provider shall not be entitled to reimbursement of
28 any expenses incurred in retrieving or copying health care billing records
29 unless the health care provider establishes the reason the requested re-
30 cords cannot reasonably be retrieved or copied in the ordinary course of
31 business.

32 (d) A health care provider shall not make any alterations, additions
33 or deletions of information recorded in the health care records of a patient
34 except that a health care provider may make additional contemporaneous
35 entries in the health care records, and may make corrections or additions
36 to the health care records which are clearly designated as late entries with
37 the date of entry shown.

38 Sec. 5. (a) A health care provider may withhold or limit access to or
39 copies of health care records or health care billing records, or a portion
40 thereof, if the health care provider certifies that providing access to or
41 copies of the requested records, or a portion thereof, will create a signif-
42 icant risk of harm to the patient.

43 (b) If a health care provider withholds or limits access to or copies of

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1 health care records or health care billing records under subsection (a)
2 because releasing such records to the patient or to a specific represen-
3 tative of the patient or authorized party would create a significant risk of
4 harm to the patient, the health care provider shall arrange to provide
5 access to or copies of the requested records to another representative of
6 the patient or authorized party, or to the patient, under conditions suf-
7 ficient to protect the patient from the risk of such harm, if it is reasonably
8 possible to do so.

9 Sec. 6. (a) Any health care provider, patient, representative of a pa-
10 tient or authorized party may bring a claim or action to enforce the pro-
11 visions of this act, and any court having jurisdiction of such claim or action
12 may, in its discretion, award attorney fees for failure to comply with this
13 act without just cause or excuse.

14 (b) The patient, or a representative of a minor, incompetent or de-
15 ceased patient, shall be given reasonable notice of any action concerning
16 access to or copying of health care records or health care billing records,
17 and may intervene as a party in any such action.

18 Sec. 7. This act shall not be construed or interpreted to limit or im-
19 pair access to health care records or health care billing records under any
20 federal or state statute, law, regulation, rule or order.

21 Sec. 8. This act shall take effect and be in force from and after its
22 publication in the statute book.



**Association of Community Mental
Health Centers of Kansas, Inc.**

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Web Site: www.acmhck.org

**Testimony Provided to the Senate Judiciary Committee
Ellen Piekalkiewicz, Director of Policy and Planning
March 14, 2001**

The Association of Community Mental Health Centers of Kansas opposes S.B. 88 for several reasons, primarily confidentiality of patient records.

We believe S.B. 88 undermines the confidentiality of patient records. Due to the stigma still very prevalent in our society the confidentiality of mental health records is paramount to any other concerns and issues.

As we read S.B. 88 we believe that it would allow "representative of the patient" to include any parent of a minor child, a spouse or any child or parent of an incompetent patient, any heir of a deceased patient, or a person designated by a "representative of a patient". Common sense would tell us that there are many situations where "representative of the patient" as described above should not be given access to a person's **private** mental health records.

Patients of Community Mental Health Centers (CMHCs) express frequent concerns about the privacy of their records as well general confidentiality issues concerning their treatment at CMHCs.

I have received the amended language that relates the confidentiality protections. I will be discussing the proposed amendment with my Board members to determine whether it affords adequate protection of mental health records.

Thank-you for this opportunity to testify.

Patricia Murray
President
Salina

Randy Class
President Elect
Wichita

Diane Z. Drake
Vice President
Ottawa

C. Sheldon Carpenter
Secretary
Greensburg

John Randolph
Treasurer
Emporia

Pete Zevenbergen
Member at Large
Kansas City

David Wiebe
Past President
Mission

Paul Klotz
Executive Director
Topeka

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3-14-01
att 12*

13

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CONKLIN, BURGHART & CROW, L.L.C.
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TESTIMONY OF BOB ALDERSON
ON BEHALF OF THE
KANSAS PHARMACISTS ASSOCIATION
BEFORE THE SENATE COMMITTEE ON JUDICIARY

SENATE BILL NO. 88

March 14, 2001

Chairman Vratil and Members of the Committee:

My name is Bob Alderson, and I am appearing on behalf of the Kansas Pharmacists Association (KPhA) in opposition to Senate Bill No. 88. While KPhA strongly supports the right of a patient to timely access to the patient's health care records at a reasonable cost, we believe that SB 88, as drafted, is far too broad and ambiguous.

Pharmacists are, perhaps, somewhat unique among health care providers with respect to maintenance of their patients' records, in that substantially all pharmacists maintain these records electronically. Accordingly, providing a patient timely access to these records at a reasonable cost does not, as a general rule, present any difficulty for pharmacists. Our primary concern is maintaining the confidentiality of these records and not divulging them to persons who are not authorized to have access to the records.

That issue is addressed in K.S.A. 65-1654, which places the pharmacist's records of prescriptions on the same level of confidentiality as provided by law for records of prescriptions dispensed by a physician. Thus, pharmacists proceed with an abundance of caution with respect to divulging a patient's records. As a general rule, pharmacists will not disclose a patient's records except to the patient or pursuant to a court order or subpoena.

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SB 88 would broaden the universe of persons entitled to inspect and copy a patient's records, and it is this aspect of the bill that we find particularly troubling. Not only does SB 88 identify persons who would be entitled to obtain a patient's records that we do not believe should be so entitled, it lacks a procedure which would be sufficient to satisfy a health care provider that a person requesting access to a patient's records has appropriate authorization.

I am aware that the sponsors of SB 88 have proposed amendments to the bill which are designed to address the concerns expressed by pharmacists and other health care providers. I have not had an opportunity to study these amendments thoroughly, but at first blush they would appear to address most of the concerns expressed during the various conversations and dialogues which have preceded this hearing. However, I regret that I am not in a position to categorically endorse these amendments without first conferring with Bob Williams, KPhA's Executive Director, and officers of the Association.

I also am aware that the Kansas Hospital Association and Kansas Medical Society have jointly drafted legislation which also would appear to address the concerns of health care providers surrounding SB 88. Again, however, I am unable to provide the Association's endorsement of that proposed legislation at this time.

Please be assured that the Kansas Pharmacists Association stands ready to continue discussions with the sponsors of SB 88 and the other health care providers affected by the bill, in order to arrive at a mutually satisfactory resolution of the concerns expressed by all parties.

Thank you for the opportunity of appearing before the Committee on this issue. I will be happy to respond to any questions.



POLSINELLI
WHITE
VARDEMAN &
SHALTON

Memorandum

TO: The Honorable John Vratil, Chairman
House Judiciary Committee

FROM: William W. Sneed, Legislative Counsel
The Health Insurance Association of America

RE: S.B. 88

DATE: March 13, 2001

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent the Health Insurance Association of America ("HIAA"). We appreciate the opportunity to present testimony in opposition to S.B. 88.

HIAA is the nation's leading advocate for the private, market-based health care system. Our 255+ members provide health insurance to approximately 110 million Americans, many of whom are Kansas residents. HIAA's members offer a wide variety of health coverages to meet the needs of Kansas citizens, including major medical health plans, long term care insurance, supplemental health coverage, disability income and prepaid dental plans.

S.B. 88 would establish procedures for patients and providers to follow regarding access to health insurance. The bill would also establish billing procedures for providing copies of such records. Although insurers may not be directly affected by this bill, it is our position that we would be indirectly affected as the bill relates to accessing and providing copies of these records, particularly in regard to litigation involving personal injury.

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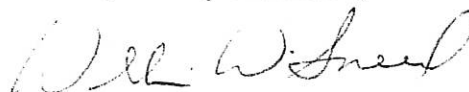
The insurance industry is currently under a deluge of new confidentiality and privacy laws at both the federal and state levels. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is a federal regulatory scheme dealing with, among other things, medical record keeping. These regulations will also apply to the disclosure of such health information. It is our concern that S.B. 88, in its current form, will create a direct conflict with the HIPAA regulations.

Further, H.B. 2480, which deals with the adoption of a model regulation concerning privacy of financial health information, is currently scheduled for hearing on March 15, 2001, in the Senate Financial Institutions and Insurance Committee. That bill is commonly referred to as the National Association of Insurance Commissioners' ("NAIC") Model Privacy Law. Inasmuch as H.B. 2480 simply allows the Commissioner to promulgate a privacy regulation, we cannot directly be certain as to its effect on S.B. 88. However, in looking at the model regulation, we again have concerns that that proposed regulation and S.B. 88 may be in conflict.

Based upon the foregoing, we respectfully request that your Committee take no action on S.B. 88. We do not believe that when compared to the other bills that are in transition, this bill would assist the consumers of the State of Kansas.

We appreciate the opportunity to present testimony, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed



POLSINELLI
WHITE
VARDEEMAN &
SHALTON

Memorandum

TO: The Honorable John Vratil, Chairman
House Judiciary Committee

FROM: William W. Sneed, Legislative Counsel
The University of Kansas Hospital Authority

RE: S.B. 88

DATE: March 13, 2001

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I act as Legislative Counsel to the University of Kansas Hospital Authority ("UKHA"). UKHA operates the hospital commonly referred to as K.U. Med. Originally, the hospital at the University of Kansas Medical Center was part of the state system. However, five years ago the Legislature passed the University of Kansas Hospital Authority Act, which changed the governance of the hospital. Instead of reporting through the University of Kansas and the Board of Regents, the new law set up a separate hospital authority with its own 14-member board of directors. Thus, the hospital is able to transact business more akin to a hospital found in the private sector as opposed to a governmental entity.

We appreciate the opportunity to present testimony in opposition to S.B. 88. We are aware that you will receive testimony from the Kansas Hospital Authority, an association of which the KUHA is a member. We concur and support the testimony provided by the Association.

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Telephone: (785) 233-1446
Telecopy: (785) 233-1939
wsneed@pwvs.com

Sm. J. Vratil
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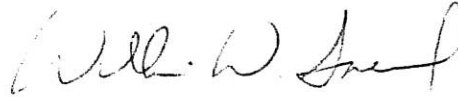
Along with the comments presented to this Committee by the Association, the Authority requested that I present to you our concerns and place on the record our opposition to this bill.

1. Although no system is perfect, we are unaware of any major problem that this proposed legislation appears to "fix." Our hospital has a standard procedure that allows the appropriate person to gain access to records from our hospital. This is accomplished every day.
2. The bill seems to assume that all a hospital needs to do is push a button and records are immediately created. Although there are many records on a computer system, a huge volume of records are not found within the computer system and must physically be withdrawn, and time is needed to create a copy of these documents.
3. In our review the bill and our understanding of the newly-promulgated Health Insurance Portability and Accountability Act of 1996 ("HIPAA") regulations, we believe that S.B. 88 would be in conflict with federal law. These rules and regulations are voluminous and may be reviewed by the new administration. Thus, we would urge this Committee not to take action in this area until the dust settles on the federal regulations.

Needless to say, the Authority is very concerned about patient confidentiality and the ability to provide those records to the appropriate person in a timely manner. As will be outlined in other testimony, the Kansas Department of Health and Environment has several regulations on patient records which, to our knowledge, seem to work within our system. Thus, we do not see the need for S.B. 88 and we urge your Committee's unfavorable action on the bill.

I appreciate the opportunity to present testimony, and if you have any questions,
please feel free to contact me.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "William W. Sneed".

William W. Sneed



POLSINELLI
WHITE
VARDEEMAN &
SHALTON

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16

Memorandum

TO: The Honorable John Vratil, Chairman
House Judiciary Committee

FROM: William W. Sneed, Legislative Counsel
The State Farm Insurance Companies

RE: S.B. 88

DATE: March 13, 2001

Mr. Chairman, Members of the Committee: My name is Bill Sneed and I represent The State Farm Insurance Companies. We appreciate the opportunity to present testimony in opposition to S.B. 88. S.B. 88 would establish procedures for patients and providers to follow regarding access to health insurance. The bill would also establish billing procedures for providing copies of such records. Although insurers may not be directly affected by this bill, it is our position that we would be indirectly affected as the bill relates to accessing and providing copies of these records, particularly in regard to litigation involving personal injury.

The insurance industry is currently under a deluge of new confidentiality and privacy laws at both the federal and state levels. The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") is a federal regulatory scheme dealing with, among other things, medical record keeping. These regulations will also apply to the disclosure of such health

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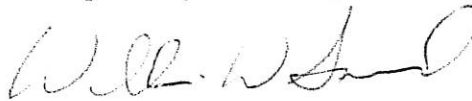
information. It is our concern that S.B. 88, in its current form, will create a direct conflict with the HIPAA regulations.

Further, H.B. 2480, which deals with the adoption of a model regulation concerning privacy of financial health information, is currently scheduled for hearing on March 15, 2001, in the Senate Financial Institutions and Insurance Committee. That bill is commonly referred to as the National Association of Insurance Commissioners' ("NAIC") Model Privacy Law. Inasmuch as H.B. 2480 simply allows the Commissioner to promulgate a privacy regulation, we cannot directly be certain as to its effect on S.B. 88. However, in looking at the model regulation, we again have concerns that that proposed regulation and S.B. 88 may be in conflict.

Based upon the foregoing, we respectfully request that your Committee take no action on S.B. 88. We do not believe that when compared to the other bills that are in transition, this bill would assist the consumers of the State of Kansas.

We appreciate the opportunity to present testimony, and if you have any questions, please feel free to contact me.

Respectfully submitted,



William W. Sneed



March 13, 2001

The Honorable Senator John Vratil
Chairman of the Senate Judiciary Committee

Re: Senate Bill 88

The Honorable Senator Vratil:

I am the Health Information Management (HIM) Director at Wesley Medical Center and am writing in response to Senate Bill 88 regarding release of patient health information. It is my understanding that Trial Attorneys are dissatisfied with access and delays in receiving health information. There are several concerns I would like to address regarding the proposed regulation:

1. Patient Confidentiality

A key function of my department is protecting patient information by evaluating and validating requests for copies of patient medical records/health information. The process of protecting patient health information involves identifying the patient and validating the patient's authorization with regards to all guiding factors such as federal, state and local regulations. There are guidelines and regulations governing minors, incompetent patients, deceased patients, divorce, adoptions, substance abuse, sensitive diagnoses, court proceedings, etc. that are utilized for making determinations regarding a request for medical information. Section 1(c)&(d) of Senate Bill 88 allows for significant inappropriate access to a medical record without direct patient authorization. This bill does not promote patient's right to confidentiality.

Wesley Medical Center has provided patient access to their medical record for many years. It is our policy to allow such access for patients in order to provide an opportunity to participate in and understand their health care treatment and decisions. Patient access and patient authorization to release health information is a routine process that occurs appropriately and professionally everyday in hospitals and health care organizations throughout Kansas.

Section 1(f) of the proposed regulation allows access to all records "maintained" by the health care provider. There are many health care records which Senate Bill 88 could allow access to such as peer review, risk management records and supplemental records already protected by state regulations. All records maintained is such a broad term that would possibly allow for inappropriate access.

2. Timeliness

Section 1(f) refers to requestors providing "reasonable notice" to request copies of medical records. Frequently we receive an attorney request or subpoena which only allows for a 24 hour turn around time for copies of a medical record. With the exception of patient protection (i.e. child abuse case for Juvenile Court), most cases are scheduled to allow sufficient time for a hospital to provide copies if the attorney plans wisely. I would request that "reasonable notice" be well defined so that sufficient time is allowed to respond to a request, subpoena or court order. Such "reasonable notice" could be defined as 10 days as offered in sections 2(b) and 3(b) of this bill. Each "stat" request made by an attorney adds cost to the process for releasing medical records.

Sections 2(b) and 3(b) define a 10-day time period in which a facility must provide access and/or respond to the status of the request. This time period is not sufficient time for all requests based on delays outlined below. I would request that this time frame be deleted from the proposed regulations.

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In a routine week, we receive between 400 and 500 requests for copies of medical records. The average turnaround time is 4 days from date of receipt. Delays in the process occur for many reasons which include facility processes as well as requestor processes.

Facility delays may include the following situations:

- Patient is currently being treated as an inpatient or outpatient (the medical record is primarily for patient care)
- Medical record documentation is not completed by physician (state regulation to complete record is 30 days)
- Storage of the medical record (microfilm, offsite)

Delays due to the requestor may include:

- Invalid patient authorization
- Incomplete request which does not specifically identify a patient or dates of service
- Invalid/incomplete subpoena

3. Fee Schedule

The Senate Bill 88 proposes a fee schedule to be in line with the Kansas Workman's Compensation Rates. These rates were mandated several years ago and are completely out of line with the cost of reproducing health care records. The cost for reproducing records includes a complexity of processes which consist of validating the request, record retrieval, record reproduction and record maintenance. Validating the patient's authorization is the professional decision making process which provides patient protection from inappropriate access. Record retrieval may or may not be straight forward based on the status and location of the record. And even the process of reproducing the medical record is complicated by the variety in multiple sides of documentation, paper sizes, and form layout. Medical records do not consist of 1 sided 8X11 sheets of paper. The reproduction of records is a very "manual" process due to the format of the documentation and forms.

To complete a request for medical records appropriately and to protect patient's confidentiality, requires numerous HIM staff time and professional decision making. With the new federal regulation, HIPAA, being implemented in the near future, this process will increase in complexity. The service of releasing health information is a very important function in protecting patient rights to privacy and should be compensated accordingly. I recommend that no fee schedule be set for the copying of medical records.

In closing, we are opposed to Senate Bill 88. Senate Bill 88 does not protect patient confidentiality. Senate Bill 88 does not improve the process for accessing health information. And it is unnecessary to approve Senate Bill 88 in light of HIPAA regulations as well as numerous existing state and federal regulations currently adhered to.

As you can see, there are many issues to be concerned about. Thank you for your attention to this very important issue.

Sincerely,

Nell S. Thompson, RHIA
Director, Health Information Management

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Kansas Academy of Physician Assistants

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Telephone Number: 785-235-5065

Facsimile Number: 785-235-8676

Legislative Testimony

March 14, 2001
Senate Judiciary Committee

Senate Bill No. 88

Chairman Vratil and Members of the Senate Judiciary Committee:

Thank you for the opportunity to present the testimony of the Kansas Academy of Physician Assistants on Senate Bill No. 88, a measure concerning access to health care records by patients and others. The Kansas Academy of Physician Assistants is opposed to Senate Bill No. 88. We agree that it is important to ensure patients timely access to information regarding their health care. We also believe that it is most important that the patient's privacy be respected and protected. Currently, members of the medical community operate under guidelines developed to enable appropriate easy access to patient records. The intent of this legislation is to solve a problem that doesn't exist.

We find that Senate Bill No. 88 is ambiguous in its designation of the parties who may request and access a patient's medical information (making no reference to written authorization), potentially facilitating the placement of confidential medical information into the possession of parties the patient never intended.

The provisions in Section 5(b) attempt to "protect the patient from risk of such harm if it is reasonably possible to do so". Who makes the determination of what is reasonable? What is the process for making this determination?

Additionally, the 10-day limitation to access the records would set an unreasonable standard in most medical settings and should be more practically established at not less than 30 days.

The Kansas Academy of Physician Assistants is deeply concerned that Senate Bill No. 88 would disrupt any sense of patient confidentiality currently maintained in medical record keeping, resulting in harm to our patients.

We urge the Committee to reject Senate Bill No. 88. If there is a problem that new legislation would resolve then allow the interested parties to jointly develop the language that permits patients access to their records while respecting and protecting their privacy.

Thank you for your consideration.

Loretta Hoerman, PA-C
Legislative Chairperson
Kansas Academy of Physician Assistants

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Sisters of Charity
of Leavenworth
Health System

March 13, 2001

To The Senate Judiciary Committee:

The Sisters of Charity of Leavenworth Health System, which has four hospitals in Kansas: Bethany and Providence in Kansas City, Kansas, Saint John in Leavenworth and St. Francis Hospital and Medical Center in Topeka, respectfully requests that you oppose Senate Bill 88.

Health Care providers have a duty to maintain the confidentiality of medical records and we believe this bill appears to weaken medical record privacy protections. The bill would make it possible for a representative of the patient to appoint an authorized party to inspect and copy any health care records. The authorized party could be someone never contemplated by the patient to access the records and, under SB 88; this authorization does not even have to be in writing. The bill provides no guidance for determination of a patient's competency.

We believe that existing Kansas regulations provide adequate protection for delivering patient records as requested within reasonable time frames.

We also believe the providers may charge for the reasonable cost of all duplications of medical record material or information, including that material which cannot routinely be copied or duplicated on a standard commercial photocopy machine.

Thank you for your consideration of our request.

TO: Senate Judiciary Committee

FROM: Dennis D. Tietze MD
Legislative Affairs Committee
Kansas Academy of Family Physicians

DATE: March 14, 2001

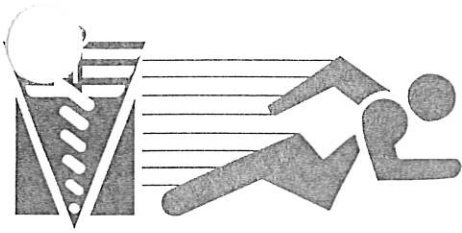
SUBJECT: SB 88; concerning health care records

The Kansas Academy of Family Physicians appreciates the opportunity to speak in opposition to SB 88. This bill corrects a problem that in our opinion does not exist. There are well established guidelines in the current law to adequately protect patient access to their medical information.

The KAFP supports the right of all patients to access his or her medical records. This is currently required by hospital and physician regulations. HIPPA (the Health Insurance Portability Act) sets forth sweeping guidelines to maintain patient confidentiality. The medical community is currently working to understand how to comply with these new requirements. SB 88 potentially gives access to medical records to many potential parties that were never authorized by the patient and may very well conflict with HIPPA regulations. SB 88 defines documents for inclusion in the medical record that were never met to be part of the medical record. The definition of health care records under SB 88 is so broad as to potentially destroy risk management and peer review processes.

The medical community currently faces a significant burden complying with current regulations and anticipated regulations forthcoming from HIPPA. We do not need nor do we want the further complications created in SB 88. If there is another hidden issue such as re evaluation of the peer review process, we are willing to participate in discussions in another type of forum. We strongly urge that no action be taken on SB 88.

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Steve Kearney
Executive Director

March 14, 2001

To: Chairman Vratil and members of the Senate Judiciary Committee
Re: SB 88

Chairman Vratil and members of the Judiciary Committee:

A patient has the right to access his or her medical records, as well as the right to know that his or her records are being kept confidential. The Kansas Physical Therapy Association believes that current regulations already provide for access by patients to their medical records, and that SB 88 threatens the right of confidentiality by potentially providing access to unauthorized individuals.

In this regard, SB 88 is premature. HIPAA will create a regulatory scheme dealing with all aspects of medical record keeping, and will often be overridden when HIPAA ultimately becomes effective. The KPTA also believes that SB 88 is too broad, and could be in conflict with current state law by encompassing peer review records, risk management records, and other related materials.

Thank you for this opportunity to provide our input on SB 88.

Sincerely,

Susan Grace
KPTA President

Richard B. Warner. M.D.
10550 Quivira Road, Suite 330
Overland Park, Kansas 66215
(913) 492-4921

March 13, 2001

The Honorable John Vratil
Chairman, Senate Judiciary Committee
Kansas Senate
Topeka, Kansas 66612

Dear Senator Vratil:

I would like to present my opinion of opposition to Senate Bill 88, which is scheduled for hearing tomorrow. I am a practicing psychiatrist in Overland Park, and I have concerns that the bill will have unintended ill effects on the ability of patients to obtain proper care in a setting of privacy and will place all health care practitioners in jeopardy of unwarranted liability risks.

Here is one example of the unintended ill effects. As I read the definition of "authorized party", it would include various life insurance companies, who use a blanket authorization form in requesting medical records as part of the application process for life insurance. Currently, I provide a short pertinent summary in substitution for the detailed notes, which contain confidential information that is of no relevance to the purpose of an insurance application. Such information could prove embarrassing or harmful to the patient if it travels beyond my files in any but very carefully controlled circumstances.

To set up a rigid requirement of producing on very short notice anything that fits the broad definition of a health care record will have a chilling effect on the atmosphere of privacy in the health care encounter. That privacy has always been understood as the thing that allows patients to set aside their natural inhibitions against sharing information that could cause them shame or legal jeopardy in any other circumstance. Indeed, concern for that privacy is being codified at a federal level in regulations pursuant to the HIPAA law. Those regulations will likely be at variance with this state law and contradictions between the two will place health care professionals in legal jeopardy as they conscientiously strive to carry out their duties to their patients.

I hope that the proponents of this new law will be asked to demonstrate where real legal harm has befallen real people who have so far been operating under the current state and federal laws regarding the release of medical records. As I read the new law, much is already provided under current law, and what is added simply requires immediate

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response to broader demands that will most often serve no constructive purpose.

One occurrence in my own practice history suggests the need to be circumspect about granting attorneys ready access to health records in their broadest definition. In one case an attorney mailed me a photocopied authorization to release all of my patient's record to him. When I checked this with my patient we determined that the attorney had "whited out" the phrase "excluding psychiatric records", which she had added to the authorization. While I do not want to impugn the motives of attorneys in general, I hope that we will not be naïve to the possibility of mischievous overuse of an overly broad statute.

In closing, I would like to draw a contemporary parallel. Whatever one's view of the damage caused by cigarette smoking, I believe the large national tobacco settlement will have very little impact in actually reducing the incidence smoking among young people or reducing smoking related health expenditures in the future. What it will do is ensure the perpetuation of a government-industry cartel that derives huge amounts of income as an alternative to legitimate taxation. It will also award obscenely high legal fees to the small number of trial attorneys who were able to associate themselves with it. It is worth remembering that this landmark in American law began with trial attorneys in Florida convincing the legislators of that state of the need to change the law in such a way as to make it much more difficult for the tobacco companies to defend themselves in court. We will never know the intention of those legislators, but we will know the results of the process that was set in motion.

Thank you for your attention to my opinion. Please include it with the opinions of the various representatives of the professional organizations that will be affected by this proposed law.

Sincerely,

Richard B. Warner. M.D.

March 14, 2001

The Honorable John Vratil, Chairman
Senate Judiciary Committee
Topeka, KS

STATEMENT IN OPPOSITION TO SENATE BILL 88

Submitted by: Willard W. Grosz
Saint Lukes Shawnee Mission Health System

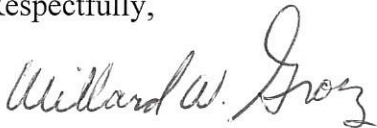
Dear Chairman Vratil and Members of the Committee:

I am writing in opposition to Senate Bill 88 concerning access to health care records and health care billing records by patients and others. Our reasons are as follows:

1. This bill threatens the right of patients to confidentiality and would give access to many potential parties who were never authorized by the patient.
2. The definition of "health care records" in this bill is so broad that it could encompass peer review records, risk management records and other records that go far beyond patient medical records.
3. The bill would create a new cause of action that could be brought against a health care provider who violates the statute.
4. We believe SB 88 may conflict with and be superceded by HIPAA when it becomes effective.

We encourage you not to act favorably on this bill. Thank you for your consideration.

Respectfully,



Willard W. Grosz, President
Shawnee Mission Medical Center Foundation



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www.nursingworld.org/snas/ks

the Voice of Nursing in Kansas

Emma Doherty, M.A., R.N.
President

Terri Roberts, J.D., R.N.
Executive Director

For More Information Contact
Terri Roberts J.D., R.N.
233-8638 Fax 233-5222

March 14, 2001

S.B. 88 ACCESS TO MEDICAL & HEALTH RECORDS WRITTEN TESTIMONY

Senator Vratil and members of the Senate Judiciary Committee, the KANSAS STATE NURSES ASSOCIATION (KSNA), the professional organization for registered nurses is concerned about the breadth and depth of the access to healthcare and medical records anticipated in S.B. 88. At this time we are unable to support the proposed legislation as written.

The nursing profession has access and responsibility in many settings for obtaining and maintaining confidential medical and health records on individuals. New technologies for documentation have enhanced this work, and at the same time made it more challenging to control with the electronic versions that are on computer systems. While the proposed HIPPA regulations will raise the standard and create a new framework for limiting, denying and controlling access to such information contained in an individuals medical record, these are so new (and still in discussion) that we believe it would be in the best interest of all parties to wait and see if the HIPPA privacy provisions are adequate to protect the records and provide the needed accessibility being sought through S.B. 88.

Thank you for consideration of these comments.

The mission of the Kansas State Nurses Association is to promote professional nursing, to provide a unified voice for nursing in Kansas and to advocate for the health and well-being of all people.

Constituent of The American Nurses Association

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att 24

**KANSAS
OPTOMETRIC
ASSOCIATION**

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koa@cjnetworks.com

March 13, 2001

TO: SENATE JUDICIARY COMMITTEE

FROM: GARY L. ROBBINS, CAE, EXECUTIVE DIRECTOR

RE: STATEMENT OF SENATE BILL 88

The Kansas Optometric Association wants to express our concerns about Senate Bill 88 as drafted. We are comfortable with the intent of Senate Bill 88 in terms of access to patient records. However, we are not convinced a serious problem currently exists. Our greatest concern is that the language in Senate Bill 88 may inadvertently create more confusion and result in new problems in this area. Please use caution with legislation that impacts the entire health care delivery system.



KANSAS DENTAL ASSOCIATION

Date: March 14, 2001

To: Senate Committee on Judiciary

From: Kevin J. Robertson, CAE
Executive Director

RE: Testimony in Opposition to SB 88

Senator Vratil and members of the Committee I am Kevin Robertson, executive director of the Kansas Dental Association (KDA) which represents about 80% of Kansas' practicing dentists. I am here today to testify in opposition of SB 88 as it would greatly jeopardize the dentist/provider confidentiality which currently exists between dentists and their patients.

Briefly, the KDA supports the position of the Kansas Hospital Association and other healthcare provider groups. Let me add that the dentists take very seriously the *American Dental Association Principle of Ethics and Code of Professional Conduct*. When a dentist calls me with a question regarding the release or transfer of records, the Code is where I turn to provide assistance. No, the Code is not law, however, the 950 KDA members (80% of the actively practicing dentists in Kansas) have agreed to follow it. The section in the *American Dental Association Principle of Ethics and Code of Professional Conduct* regarding records is below for your review.

1.B. PATIENT RECORDS.

Dentists are obliged to safeguard the confidentiality of patient records. Dentists shall maintain patient records in a manner consistent with the protection of the welfare of the patient. Upon request of a patient or another dental practitioner, dentists shall provide any information that will be beneficial for the future treatment of that patient.

ADVISORY OPINIONS

1.B.1. FURNISHING COPIES OF RECORDS.

A dentist has the ethical obligation on request of either the patient or the patient's new dentist to furnish, either gratuitously or for nominal cost, such dental records or copies or summaries of them, including dental X-rays or copies of them, as will be beneficial for the future treatment of that patient. This obligation exists whether or not the patient's account is paid in full.

1.B.2. CONFIDENTIALITY OF PATIENT RECORDS.

The dominant theme in Code Section 1-B is the protection of the confidentiality of a patient's records. The statement in this section that relevant information in the records should be released to another dental practitioner assumes that the dentist requesting the information is the patient's present dentist. The former dentist should be free to provide the present dentist with relevant information from the patient's records. This may often be required for the protection of both the patient and the present dentist. There may be circumstances where the former dentist has an ethical obligation to inform the present dentist of certain facts. Dentists should be aware, however, that the laws of the various jurisdictions in the United States are not uniform, and some confidentiality laws appear to prohibit the transfer of pertinent information, such as HIV seropositivity. Absent certain knowledge that the laws of the dentist's jurisdiction permit the forwarding of this information, a dentist should obtain the patient's written permission before forwarding health records which contain information of a sensitive nature, such as HIV seropositivity, chemical dependency or sexual preference. If it is necessary for a treating dentist to consult with another dentist or physician with respect to the patient, and the circumstances do not permit the patient to remain anonymous, the treating dentist should seek the permission of the patient prior to the release of data from the patient's records to the consulting practitioner. If the patient refuses, the treating dentist should then contemplate obtaining legal advice regarding the termination of the dentist/patient relationship.

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Phone: 785-272-7360
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