

2/22/96 Judiciary

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SENATE FILE 2263

BY MADDOX

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
 Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the establishment of a procedure for the  
 2 release of medical records and information regarding  
 3 plaintiffs involved in certain civil actions.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 2263

1 Section 1. Section 622.10, Code 1995, is amended to read  
2 as follows:

3 622.10 COMMUNICATIONS IN PROFESSIONAL CONFIDENCE --  
4 EXCEPTIONS -- REQUIRED CONSENT TO RELEASE OF MEDICAL RECORDS  
5 -- APPLICATION TO COURT.

6 1. A practicing attorney, counselor, physician, surgeon,  
7 ~~physician's~~ physician assistant, mental health professional,  
8 or the stenographer or confidential clerk of any such person,  
9 who obtains information by reason of the person's employment,  
10 or a member of the clergy shall not be allowed, in giving  
11 testimony, to disclose any confidential communication properly  
12 entrusted to the person in the person's professional capacity,  
13 and necessary and proper to enable the person to discharge the  
14 functions of the person's office according to the usual course  
15 of practice or discipline.

16 2. The prohibition does not apply to cases where the  
17 person in whose favor the prohibition is made waives the  
18 rights conferred; nor does the prohibition apply to physicians  
19 or surgeons, ~~physician's~~ physician assistants, mental health  
20 professionals, or to the stenographer or confidential clerk of  
21 any physicians or surgeons, ~~physician's~~ physician assistants,  
22 or mental health professionals, in a civil action in which the  
23 condition of the person in whose favor the prohibition is made  
24 is an element or factor of the claim or defense of the person  
25 or of any party claiming through or under the person. The  
26 evidence is admissible upon trial of the action only as it  
27 relates to the condition alleged.

28 3. a. If a written request is made to a physician or  
29 surgeon, physician assistant, or mental health professional by  
30 an adverse party for the patient records of a plaintiff in a  
31 civil action in which the condition of the plaintiff in whose  
32 favor the prohibition is made is an element or factor of the  
33 claim or a defense of the adverse party or of any party  
34 claiming through or under the adverse party, and the records  
35 relate to the condition alleged, the physician or surgeon,

1 physician assistant, or mental health professional shall  
2 notify the plaintiff of the request and the plaintiff shall  
3 sign a consent within twenty-eight days of receipt of the  
4 notification, authorizing the physician or surgeon, physician  
5 assistant, or mental health professional to do all of the  
6 following:

7     (1) Provide a complete copy of the patient's records,  
8 including but not limited to any reports of third parties or X  
9 rays relating to the condition.

10     (2) Allow the adverse party to review the original patient  
11 records relating to the condition alleged.

12     (3) Review other health care records, films, and documents  
13 relating to the condition alleged and furnished by the  
14 attorney of the adverse party, prior to providing testimony.

15     (4) Confer with the attorney of the adverse party prior to  
16 providing testimony regarding the plaintiff's medical history  
17 and the condition alleged, opinions regarding health etiology  
18 and prognosis for the condition alleged, and opinions  
19 regarding the care provided to the plaintiff by other health  
20 care providers for the condition alleged.

21     b. If a plaintiff fails to sign a consent within the  
22 prescribed time period, or if a physician or surgeon,  
23 physician assistant, or mental health professional fails to  
24 comply with the request, the court may order disclosure or  
25 compliance or the failure may be grounds for dismissal of the  
26 action.

27     4. If an adverse party desires the oral deposition, either  
28 discovery or evidentiary, of a physician or surgeon,  
29 physician's physician assistant, or mental health professional  
30 to which the prohibition would otherwise apply or the  
31 stenographer or confidential clerk of a physician or surgeon,  
32 physician's physician assistant, or mental health professional  
33 or desires to call a physician or surgeon, physician's  
34 physician assistant, or mental health professional to which  
35 the prohibition would otherwise apply or the stenographer or

1 confidential clerk of a physician or surgeon, ~~physician's~~  
2 physician assistant, or mental health professional as a  
3 witness at the trial of the action, the adverse party shall  
4 file an application with the court for permission to do so.  
5 The court upon hearing, which shall not be ex parte, shall  
6 grant permission unless the court finds that the evidence  
7 sought does not relate to the condition alleged and shall fix  
8 a reasonable fee to be paid to the physician or surgeon,  
9 ~~physician's~~ physician assistant, or mental health professional  
10 by the party taking the deposition or calling the witness.

11 5. For the purposes of this section, "mental health  
12 professional" means a psychologist licensed under chapter  
13 154B, a registered nurse licensed under chapter 152, a social  
14 worker licensed under chapter 154C, a marital and family  
15 therapist licensed under chapter 154D, a mental health  
16 counselor licensed under chapter 154D, or an individual  
17 holding at least a master's degree in a related field as  
18 deemed appropriate by the board of behavioral science  
19 examiners.

20 6. ~~No~~ A qualified school guidance counselor, who has met  
21 the certification and accreditation standards of the  
22 department of education as provided in section 256.11,  
23 subsection 10, who obtains information by reason of the  
24 counselor's employment as a qualified school guidance  
25 counselor shall not be allowed, in giving testimony, to  
26 disclose any confidential communications properly entrusted to  
27 the counselor by a pupil or the pupil's parent or guardian in  
28 the counselor's capacity as a qualified school guidance  
29 counselor and necessary and proper to enable the counselor to  
30 perform the counselor's duties as a qualified school guidance  
31 counselor.

32 EXPLANATION

33 This bill provides a procedure for the furnishing of a  
34 plaintiff's patient records by a physician or surgeon,  
35 physician assistant, or mental health professional to an

1 adverse party in a civil action in which the condition of the  
2 plaintiff is an element or factor of the claim or is a defense  
3 of the adverse party or of any party claiming through or under  
4 the adverse party, if the record relates to the condition  
5 alleged. The bill provides that if a request for patient  
6 records is made, the plaintiff shall sign a consent within 28  
7 days of the receipt of notification by the physician or  
8 surgeon, physician assistant, or mental health professional of  
9 the written request authorizing the physician or surgeon,  
10 physician assistant, or mental health professional to do all  
11 of the following: provide a complete copy of the patient's  
12 records; allow the adverse party to review the original  
13 patient record; review other records, films, and documents  
14 relating to the alleged condition; and confer with the adverse  
15 party's attorney regarding the patient's medical history, the  
16 etiology and prognosis for the condition alleged, and opinions  
17 of other health care professionals regarding the condition  
18 alleged. If the plaintiff fails to sign the consent form  
19 within the 28-day period, the court may order disclosure or  
20 compliance with the requirements or may dismiss the action.

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