



Sub. H.B. 499

123rd General Assembly

(As Passed by the General Assembly)

Reps. Brading, Distel, Mead, Hollister, Callender, Redfern, Hartnett, Aslanides, Gardner, Cates, Evans, Grendell, Jolivette, Taylor, Willamowski, Carey, Verich, Peterson, Hoops, A. Core, Damschroder, Harris, Terwilleger, Olman, Metzger, Metelsky, Barrett, Stevens, Britton

Sens. Gardner, Latell

Effective date: *

ACT SUMMARY

- Authorizes a coroner, deputy coroner, or representative of either to inspect and receive copies of a deceased person's medical and psychiatric records.
- Exempts medical and psychiatric records so acquired by a coroner, deputy coroner, or representative of either from the Public Records Law.
- Provides that a physician who permits a coroner, deputy coroner, or representative of either to inspect or receive copies of a deceased person's medical and psychiatric records in accordance with the act's procedures cannot be considered by the State Medical Board to have willfully betrayed a professional confidence that, under other circumstances, could have resulted in disciplinary action.
- Requires newly elected and newly appointed coroners to complete 16 hours of specified continuing education within a prescribed timeframe, and requires all coroners to complete 32 hours of specified continuing education during their terms of office.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared.*

CONTENT AND OPERATION

Coroner acquisition of medical and psychiatric records

Continuing "background" law

Physician-patient testimonial privilege. Continuing law generally prohibits a physician from testifying concerning a *communication* made to the physician by a patient in the physician-patient relationship or the physician's *advice* to the patient in that relationship.¹ This commonly referred to physician-patient "testimonial privilege" is or may be *waived* under specified circumstances.² If a waiver circumstance exists, a physician may testify or may be compelled to testify with respect to certain or all matters otherwise considered to be confidential communications or advice under the physician-patient testimonial privilege. (Sec. 2317.02(B)--not in the act.)

Disciplinary action. Continuing law authorizes the State Medical Board to discipline a licensed physician for, among other reasons, *willfully betraying a professional confidence*, violating a provision of the American Medical Association's Code of Ethics or another applicable code of ethics of a national

¹ A "communication" means acquiring, recording, or transmitting any information, in any manner, concerning any facts, opinions, or statements necessary to enable a physician to diagnose, treat, prescribe, or act for a patient. The term includes any medical, office, or hospital communication such as a record, chart, letter, memorandum, laboratory test and results, x-ray, photograph, financial statement, diagnosis, or prognosis. (Sec. 2317.02(B)(4)--not in the act.)

² Those circumstances include, but are not limited to, the following: (a) in any civil action, in accordance with the Civil Rules' discovery provisions, or in connection with a workers' compensation claim, if the patient or the patient's guardian or other legal representative gives express consent, or if the spouse or the executor or administrator of the estate of a deceased patient gives express consent, or if a patient, a patient's guardian or other legal representative, or the personal representative of a deceased patient's estate commences a "medical claim" (i.e., malpractice action), an action for wrongful death, another type of civil action, or a workers' compensation claim, (b) in certain criminal prosecutions, and (c) in certain instances in which the physician is acting in a professional capacity and knows or suspects a minor or a mentally retarded, developmentally disabled, or physically impaired person under 21 years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect. (Secs. 2151.421(A) and 2317.02(B)--not in the act.)

professional association, or violating provisions of the State Medical Board Law or rules adopted under it (sec. 4731.22(B)(4), (18), and (20)--not in the act).

Coroner office records. Continuing law appears to require a county coroner to keep a complete record of death certificates and other types of reports and records in all cases coming under the coroner's jurisdiction. All of the coroner's records must be kept in the coroner's office or, in the absence of that office, in the office of the clerk of the court of common pleas and must be properly indexed. The records must state (1) the name, if known, of every deceased person who "dies as a result of criminal or other violent means, by casualty, by suicide, or in any suspicious or unusual manner, or . . . suddenly when in apparent good health . . .," (2) the place where the body was found, (3) the date of death, (4) the cause of death, and (5) all other available information. Detailed findings of an autopsy must be attached to a coroner's report for each of the latter types of cases. (Secs. 313.09 and 313.12--not in the act.)

The coroner must promptly *deliver* to the county's prosecuting attorney copies of all necessary records relating to every death in which, in the judgment of the coroner or prosecuting attorney, further investigation is advisable. A county prosecuting attorney also is permitted to obtain copies of records and other necessary information from the coroner's office. (Sec. 313.09--not in the act.)

Continuing law specifies that all records of a coroner are county property and that the records of a coroner *made personally by the coroner or by an individual acting under the coroner's direction or supervision* are *public records*. Formerly, *all records in a coroner's office* were required to be open to inspection by the public, and any person could receive a copy of any of them or of parts of any of them upon a written demand accompanied by payment of a transcript fee at the rate of 15¢ per hundred words or a minimum fee of \$1. (Sec. 313.10; sec. 313.09--not in the act.)

Changes made by the act

Access to a deceased person's records. The act permits a coroner, deputy coroner, or representative of a coroner or deputy coroner, in connection with the performance of duties under the Coroners Law (see above), to submit a written request to inspect and receive a copy of the *medical and psychiatric records* of a deceased person. The person to whom the request is delivered (e.g., a physician) must make the requested records in that person's custody available *during normal business hours* to the coroner, deputy coroner, or representative for purposes of *inspection and copying*.

A person who provides copies of medical or psychiatric records pursuant to such a request is permitted to make a written request for *reimbursement* in a

specified amount for the necessary and reasonable costs of copying the requested records. The coroner, deputy coroner, or representative must remit the amount to the person upon receipt of the copies. (Sec. 313.091, first paragraph.)

Effects of providing the deceased person's records. The following are effects of providing medical and psychiatric records to a coroner, deputy coroner, or representative under the latter provisions: (1) the records are not public records under the Public Records Law, (2) they also are exempt from the provision of the Coroners Law mentioned above that generally makes "all records in the coroner's office" open to public inspection and copying, and (3) the release of the records does not constitute a willful betrayal of a professional confidence for which the State Medical Board could take disciplinary action under the State Medical Board Law (sec. 313.091, second paragraph and sec. 313.10).³ (See "**Disciplinary action,**" above.)⁴

³ *The Public Records Law generally requires that all public records be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Upon request, a public office or person responsible for public records must make copies available at cost, within a reasonable period of time. These provisions in section 149.43 of the Revised Code are similar to the specific inspection and copying of records provisions in the Coroners Law.*

A "public record" generally is defined as any record that is kept by any public office, including, but not limited to, state, county, city, village, township, and school district units. However, both the Public Records Law and other statutes exclude certain records from the latter broad definition. One current exception is medical records, which are defined as any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history, diagnosis, prognosis, or medical condition of a patient and that is generated and maintained in the process of medical treatment (sec. 149.43(A)(1)(a) and (3)). The act specifies that the term "medical record" in its provisions is to have this same meaning (sec. 313.091).

⁴ *Because continuing law requires a coroner to deliver to the prosecuting attorney copies of all necessary records relating to every death in which, in the judgment of either official, further investigation is advisable and also permits the prosecuting attorney to obtain copies of records and other necessary information from the coroner's office, it is possible that a coroner may have to turn over medical and psychiatric records obtained under the act's provisions to a prosecuting attorney despite the fact that those records are not public records.*

Continuing education for coroners

Continuing law

A candidate for election to or an appointee to the office of county coroner must be a physician who has been licensed to practice as a physician in Ohio for a period of at least two years immediately preceding the election or appointment and must be in good standing in the profession (sec. 313.02).

Changes made by the act

The act provides two types of *continuing education requirements* for coroners, one for newly elected and newly appointed coroners and one for all coroners. Beginning in 2000 and in each fourth year thereafter, after the general election in November and prior to taking office, a *newly elected* coroner must attend and successfully complete 16 hours of specified continuing education (see below).⁵ In addition, within 90 days after appointment to a coroner's office, a *newly appointed* coroner must attend and successfully complete 16 hours of the specified continuing education. These hours of continuing education must be sponsored by the Ohio State Coroners Association (OSCA) and do not count toward fulfilling the continuing education requirement for all coroners described in the next paragraph. (Sec. 313.02(B)(1).)

The act's second continuing education requirement begins in 2001. Under it, *every coroner* generally must attend and successfully complete, during the coroner's four-year term of office, a total of 32 hours of continuing education at programs sponsored by the OSCA. Twenty-four of those 32 hours generally must be successfully completed at OSCA-sponsored *statewide* meetings, with the remaining eight of those 32 hours being successfully completed at OSCA-sponsored *regional* meetings. The act permits the OSCA to approve a coroner's attendance at a continuing education program that it does not sponsor, but hours of successful completion at a non-sponsored program count only toward fulfilling the 24-hour component of the requirement. (Sec. 313.02(B)(2).)

The act requires the OSCA or another sponsoring organization to provide a certificate indicating successful completion to each coroner who successfully completes a continuing education program required by the act (sec. 313.02(B)(3)). The act does not provide, however, any explicit consequences if a coroner fails to complete either of the act's continuing education requirements.

⁵ *The act defines a "newly elected coroner" as a person who did not hold the office of coroner on the date the person was elected coroner (sec. 313.02(B)(1)).*

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	11-16-99	pp. 1369-1370
Reported, H. Local Government & Townships	03-28-00	p. 1718
Passed House (97-0)	03-29-00	pp. 1733-1734
Reported, S. State & Local Gov't & Veterans Affairs	09-19-00	p. 2073
Passed Senate (32-1)	09-19-00	pp. 2075-2076
Concurrence (94-0)	09-20-00	pp. 2261-2262

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