

**OPINION
45-241**

May 8, 1945 (OPINION)

RECORDS

RE: Medical - Used as Evidence - When

I acknowledge your letter of May 4, 1945, in which you ask the opinion of this office concerning three questions, to-wit:

1. What is the law concerning the ownership and use of medical records?
2. What is the law regarding the use of medical records as evidence in court?
3. How long do records have to be kept by the hospital?

I will answer these questions in the same order as you ask them. As far as I have been able to determine, there is no law on our statute books concerning the ownership of medical records. Undoubtedly the hospital, doctor, or the clinic that makes the record is the owner of the record subject to such use as the statutes prescribe. Insofar as I can ascertain the use of medical records is a matter governed by the statutes.

I call your attention to section 31-0801 of the North Dakota Revised Code of 1943 which is as follows:

ADMISSIBILITY IN EVIDENCE OF BUSINESS RECORDS: THE TERM 'BUSINESS' DEFINED. A record of an act, condition, or event shall be competent evidence, insofar as relevant, if:

1. The custodian or other qualified witness testifies to its identity and mode of its preparation;
2. It was made in the regular course of business, at or near the time of the act, condition, or event; and
3. The sources of information and the method and time of preparation, in the opinion of the court, were such as to justify its admission.

For the purpose of this section, the term 'business' shall include every kind of business, profession, occupation, calling, or operation of institutions, whether carried on for profit or not."

Under this statute it would seem that medical records are admissible in evidence and may be obtained for that purpose unless there is some other restriction as to their use as evidence in a court of law, or unless they are of a confidential nature.

Chapter 50-13 of the North Dakota Revised Code of 1943 deals with maternity hospitals. Section 50-1311, which is a part of said

chapter, states:

RECORDS OF MATERNITY HOSPITAL CONFIDENTIAL. No agent of the board of administration or of any board of health, nor the licensee, under the provisions of this chapter, shall disclose the contents of the records of a maternity hospital nor of the reports received therefrom, except:

1. In a judicial proceeding;
2. To officers of the law or other legally constituted boards or agencies;
3. To persons having direct interest in the well-being of the patient, or her infant, and who are in a position to serve their interests should that be necessary."

This statute further deals with the use of such a medical record as evidence.

Chapter 35-18 of the North Dakota Revised Code of 1943 deals with hospital liens. Section 35-1809 is a part thereof and is as follows:

HOSPITAL RECORDS OPEN TO INSPECTION. Any person, firm or corporation legally liable under this chapter and against whom a claim is asserted for compensation for injuries shall be permitted to examine the records of any hospital which has filed a lien statement in reference to treatment, care, and maintenance of the injured person."

This statute again deals with the use of hospital records as evidence in a court of law.

Section 50-1309, contained in the chapter pertaining to maternity hospital, is as follows:

INSPECTION OF HOSPITAL AND RECORDS OF HOSPITAL. The board of administration and its authorized agents may inspect any maternity hospital licensed under the provisions of this chapter at any time. Such board and its agents shall have free access to every part of such hospital and to the records thereof, and they may see and interview the patients therein."

This particular statute goes to the right of the board of administration to have free access to the records of a hospital.

As far as I have been able to determine, the above statutes are the only ones contained in the code that answer your first two questions.

As far as I have been able to determine, there is no law in our statutes requiring a hospital to keep its records for any specific length of time. However, as a matter of precaution, I think every hospital, doctor, and clinic that keeps a record of its patients should preserve such records for a period of at least six years after such patient has been treated. Ordinarily, any action for a civil remedy is barred by the statute of limitations at the end of six years. It would, therefore, seem wise to keep all hospital and

clinic records for at least that length of time.

A hospital lien under section 35-1811 of the North Dakota Revised Code of 1943 must be enforced or an action must be commenced thereon within one year after the filing of the lien, except that when the cause of action against a tort feisor or insurer shall not have become barred or an action is pending involving the question of liability, the lien shall continue in effect until the final termination of such action and for a period of one year thereafter.

The above is all the law that I can find in the code which is pertinent to or has any bearing on the questions that you asked. I trust that you will find the same helpful.

NELS G. JOHNSON

Attorney General