

65-28,128. Abandonment of health care records; court jurisdiction; procedure; appointment of custodian of records, authority and duties, liability, physician-patient privilege; access to records. (a) As used in this section:

(1) "Health care provider" means a person licensed to practice any branch of the healing arts by the state board of healing arts, a podiatrist licensed by the state board of healing arts, a professional corporation organized pursuant to the professional corporation law of Kansas by persons who are authorized by such law to form such a corporation and who are health care providers as defined by this subsection, a Kansas limited liability company organized for the purpose of rendering professional services by its members who are health care providers as defined by this subsection and who are legally authorized to render the professional services for which the limited liability company is organized, a partnership of persons who are health care providers under this subsection, a Kansas not-for-profit corporation organized for the purpose of rendering professional services by persons who are health care providers as defined by this subsection.

(2) "Board" means the state board of healing arts.

(b) The board shall immediately petition the court for appointment of a custodian of a health care provider's health care records if the board is notified or has independent knowledge that a health care provider: (1) Has abandoned health care records, abandoned the health care provider's practice, had the health care provider's license suspended or revoked, had a license canceled or dissolved a business entity and the health care provider is unable or refuses to allow patients access to their health care records as authorized by law or (2) has died and the health care provider's patients are unable to access their health care records as authorized by law. The petition shall nominate a person or business entity who is capable and willing to serve as the custodian of health care records. The district court shall expedite an action brought by the board. The court's findings may be made solely on a review of the documentation or affidavits attached to the petition and without hearing any testimonial evidence. The district court's review may be made ex parte without delay or notice of any kind. An appellate court shall expedite review of a district court's findings as provided in this section.

(c) Notice of hearing on the petition shall be served on the health care provider at the last known address and if the health care provider is a business entity, on the registered agent of such business entity. If the health care provider has died and an administrator of the estate has been appointed, notice shall be served on such administrator. Notice shall be served as in civil cases.

(d) At the hearing, if the court finds the health care records have been abandoned, the court shall appoint a person or business entity as the custodian of the health care records and responsible for the safekeeping thereof, and shall order the delivery and possession of the health care records to the appointed custodian of health care records. The court may make all additional orders necessary to protect the health care provider's property interests in the records.

(e) The record's custodian:

(1) Shall be a fiduciary and act in the place of the health care provider to furnish to the patient or the patient's authorized representative copies of health care records, pursuant to K.S.A. 65-4970 through 65-4973, and amendments thereto, and shall be authorized to collect any fee for disclosure authorized by K.S.A. 65-4971, and amendments thereto;

(2) shall have exclusive possession of the health care records until further order of the court;

(3) may destroy the records in the ordinary course of business when the health care provider's duty to maintain such records has ceased;

(4) shall act in the place of the health care provider to maintain confidentiality of records and shall be liable if the custodian maliciously breaches the confidentiality;

(5) shall not guarantee or be liable for the accuracy or completeness of the health care records;

(6) shall not be liable in a civil action for damages or other relief arising from the performance of the responsibilities set forth in this section except upon clear and convincing evidence that the custodian of records maliciously altered or destroyed health care records; and

(7) shall act as the health care provider for the purposes of physician-patient privilege, pursuant to K.S.A. 60-427, and amendments thereto, and shall assert any privilege acting as the physician.

(f) At any time after the appointment of a custodian, the health care provider, administrator of the health care provider's estate or board may petition the court to amend, modify or dissolve the order concerning the custodian of health care records. The court shall amend the order when it reasonably appears the health care provider or administrator of the health care provider's estate is prepared to assume the duties of the health care provider relating to the records.

(g) Nothing in this act shall prohibit the health care provider or the health care provider's authorized representative from gaining access and copying a record created by the health care provider.

(h) This section shall be part of and supplemental to the Kansas healing arts act.

History: L. 2004, ch. 117, § 1; L. 2009, ch. 133, § 3; July 1.