

## **Part 6 Evidence**

### **78B-5-601 Statutes as evidence.**

- (1) The recitals in a public statute are conclusive evidence of the fact recited for the purpose of carrying it into effect.
- (2) The recitals in a private statute are conclusive evidence between parties who claim under its provisions.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-602 Entries in official records as evidence.**

Entries in public or other official books or records, made by a public officer in the performance of the officer's official duties or by any other person in the performance of a duty specially enjoined by the law, are prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-603 Entries in course of official duty as evidence.**

An entry made by an officer or board of officers, or under the direction and in the presence of either, in the course of official duty is prima facie evidence of the facts stated in the entry.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-604 Certificate of location or purchase of public lands of United States as evidence.**

A certificate of purchase or of location of any lands in this state, issued or made in pursuance of any law of the United States, is prima facie evidence that the holder or assignee of the certificate is the owner of the land described in the certificate. This evidence may be overcome by proof that the land was in the adverse possession of the adverse party, or those under whom the party claims, or that the adverse party was holding the land for mining purposes at the time the certificate is filed.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-605 Histories, scientific books, maps, and charts as evidence.**

Historical works, books of science or art, and published maps or charts, when made or published by persons having no interest in a proceeding, are prima facie evidence of facts of general notoriety and interest.

Renumbered and Amended by Chapter 3, 2008 General Session

### **78B-5-606 Certificate of acknowledgment as evidence of execution.**

Private writings, except last wills and testaments, may be acknowledged or proved, and certified in the manner provided for the acknowledgment or proof of conveyances of real property. The certificate of acknowledgment or proof is prima facie evidence of the execution of the writing in the same manner as a conveyance of real property.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-607 When entries and writings of a decedent are prima facie evidence.**

The entries and other writings of a decedent made at or near the time of the transaction, and when the decedent was in a position to know the facts stated in the entry, may be read as prima facie evidence of the facts written about, in the following cases:

- (1) the entry was made against the interest of the person making it;
- (2) it was made in a professional capacity and in the ordinary course of professional conduct; or
- (3) it was made in the performance of a duty specially enjoined by law.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-608 Writings -- How proved.**

A writing may be proved either:

- (1) by any one who saw the writing executed;
- (2) by evidence of the genuineness of the handwriting of the maker; or
- (3) by a subscribing witness.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-609 Proof of execution when subscribing witness denies or forgets.**

If the subscribing witness denies or does not recollect the execution of the writing, its execution may still be proved by other evidence.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-610 When unnecessary.**

If the evidence shows that the party against whom the writing is offered has at any time admitted its execution, no other evidence of the execution need be given if the instrument is one produced from the custody of the adverse party and has been acted upon by the party as genuine.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-611 Proof of wills.**

A last will and testament, except a nuncupative will, is invalid, unless it is in writing and executed in accordance with Title 75, Chapter 2, Part 5, Wills. When a will is to be shown, the instrument itself shall be produced, or secondary evidence of its contents given.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-612 Proof of instruments affecting real estate.**

An instrument conveying or affecting real property, acknowledged, or proved and certified as provided by law, may, together with the certificate of acknowledgment or proof, be read in evidence in an action or proceeding, without further proof. The record, or a certified copy of the record, of the conveyance or instrument acknowledged or proved may be read in evidence, with the same effect as the original. The party offering the certified copy shall prove by affidavit or otherwise, that the original is not in the possession or under the control of the party.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-613 Proof of publication of document, notice, or order.**

- (1)
  - (a) If a court or judge orders a document or notice published in a newspaper, evidence of the publication shall be made by affidavit of the publisher, the publisher's foreman, or principal clerk with a copy of the publication attached.
  - (b) The affidavit shall state the date and newspaper of publication.
- (2)
  - (a) If a court or judge orders a document or notice published electronically in accordance with Section 45-1-101, evidence of the publication shall be made by affidavit of the website publisher or the website publisher's designee with a printed copy of the publication attached.
  - (b) The affidavit shall state the date of publication.

Amended by Chapter 388, 2009 General Session

**78B-5-614 Filing of affidavit -- Original or certified copy as evidence.**

If an affidavit is made in an action or special proceeding pending in a court, it may be filed with the court or clerk of the court. If not made in an action or special proceeding pending in a court, it may be filed with the recorder of the county where the newspaper is published. The original affidavit, or a copy certified by the judge of the court or officer having it in custody, is prima facie evidence of the facts stated in the affidavit.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-615 Parol evidence of contents of writings -- When admissible.**

- (1) The contents of a writing shall be proved by the original writing unless:
  - (a) the original has been lost or destroyed, in which case proof of the loss or destruction shall be made first;
  - (b) the original is in the possession of the party against whom the evidence is offered and the party fails to produce it after reasonable notice;
  - (c) the original is a record or other document in the custody of a public officer;
  - (d) the original has been recorded, and the record or a certified copy of the record is made in accordance with the law governing the writing offered; or
  - (e) the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time, and the evidence sought from them is only the general result of the whole.
- (2) If any business, institution, member of a profession or calling, or any department or agency of government, in the regular course of business or activity has kept or recorded any memorandum, writing, entry, print, representation or combination, of any act, transaction, occurrence, or event, and in the regular course of business has caused any or all of the same to be recorded, copied, or reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or other process which accurately reproduces or forms a durable medium for so reproducing the original, the original may be destroyed in the regular course of business unless its preservation is required by law. The reproduction, when satisfactorily identified, is as admissible in evidence as the original itself in any judicial or administrative proceeding whether the original is in existence or not, an enlargement or facsimile of the reproduction is likewise admissible in evidence if the original reproduction is in existence and

available for inspection under direction of court. The introduction of a reproduced record, enlargement or facsimile, does not preclude admission of the original.

- (3) In the cases mentioned in Subsections (1)(c) and (d), a copy of the original, or of the record, shall be produced. In those mentioned in Subsections (1)(a) and (b), either a copy or oral evidence of the contents shall be given.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-616 Business record -- Admissibility -- Weight.**

- (1) As used in this section, "business" includes business, profession, occupation, and calling of every kind.
- (2) A writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of that act, transaction, occurrence, or event, if made in the regular course of any business, and if it was the regular course of the business to make the memorandum or record at the time of the act, transaction, occurrence, or event or within a reasonable time after.
- (3) All circumstances, other than those set forth in Subsection (2), of the making of the writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but those circumstances do not affect its admissibility.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-617 Writings bearing obvious alterations -- Explanation required.**

- (1) The party producing as genuine a writing which has been altered, or appears to have been altered after its execution in a part material to the question in dispute must account for the appearance of alteration.
- (2) The party may show that the alteration:
  - (a) was made by another without the party's concurrence;
  - (b) was made with the consent of the parties affected by it;
  - (c) was otherwise properly or innocently made; or
  - (d) does not change the meaning or language of the instrument.
- (3) An altered writing that a party cannot adequately explain under Subsection (2) is not admissible.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-5-618 Patient access to medical records -- Third-party access to medical records -- Medical records services -- Fees -- Standard form.**

- (1) As used in this section:
  - (a) "Force majeure event" means an event or circumstance beyond the control of the health care provider or the health care provider's third-party service, including fires, floods, earthquakes, acts of God, lockouts, ransomware, or strikes.
  - (b) "Health care provider" means the same as that term is defined in Section 78B-3-403.
  - (c) "History of poor payment" means three or more invoices where payment is more than 30 days late within a 12-month period.
  - (d) "Indigent individual" means an individual whose household income is at or below 100% of the federal poverty level as defined in Section 26B-3-113.

- (e) "Inflation" means the unadjusted Consumer Price Index, as published by the Bureau of Labor Statistics of the United States Department of Labor, that measures the average changes in prices of goods and services purchased by urban wage earners and clerical workers.
  - (f) "Qualified claim or appeal" means a claim or appeal under any:
    - (i) provision of the Social Security Act as defined in Section 67-11-2; or
    - (ii) federal or state financial needs-based benefit program.
  - (g) "Third-party service" means a service that has entered into a contract with a health care provider to provide patient records on behalf of a health care provider.
- (2) Pursuant to Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records from a health care provider when that health care provider is governed by the provisions of 45 C.F.R., Parts 160 and 164.
  - (3) When a health care provider is not governed by Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R., Parts 160 and 164, a patient or a patient's personal representative may inspect or receive a copy of the patient's records unless access to the records is restricted by law or judicial order.
  - (4) A health care provider who provides a paper or electronic copy of a patient's records to the patient or the patient's personal representative:
    - (a) shall provide the copy within the deadlines required by the Health Insurance Portability and Accountability Act of 1996, Administrative Simplification rule, 45 C.F.R. Sec. 164.524(b); and
    - (b) may charge a reasonable cost-based fee provided that the fee includes only the cost of:
      - (i) copying, including the cost of supplies for and labor of copying; and
      - (ii) postage, when the patient or patient's personal representative has requested the copy be mailed.
  - (5)
    - (a) Except for records provided under Section 26B-8-411, a health care provider or a health care provider's third-party service that provides a copy of a patient's records to a patient's attorney, legal representative, or other third party authorized to receive records:
      - (i) shall provide the copy within 30 days after receipt of notice;
      - (ii) may charge a reasonable fee for paper or electronic copies, but may not exceed the following rates:
        - (A) \$30 per request for locating a patient's records;
        - (B) reproduction charges may not exceed 53 cents per page for the first 40 pages and 32 cents per page for each additional page;
        - (C) the cost of postage when the requester has requested the copy be mailed;
        - (D) if requested, the person fulfilling the request will certify the record as a duplicate of the original for a fee of \$20; and
        - (E) any sales tax owed under Title 59, Chapter 12, Sales and Use Tax Act; and
      - (iii) may charge an expedition fee of \$20 if:
        - (A) the requester's notice explicitly requests an expedited response; and
        - (B) the person fulfilling the request postmarks or otherwise makes the record available electronically within 15 days from the day the person fulfilling the request receives notice of the request.
    - (b) Notwithstanding the provisions of Subsection (5)(a)(ii) and subject to Subsection (5)(c), in the event the requested records are not postmarked or otherwise made available electronically by the person fulfilling the request:
      - (i) within 30 days after the day on which notice is received by the person fulfilling the request, the person fulfilling the request shall waive 50% of the fee; or

- (ii) within 60 days after the day on which notice is received by the person fulfilling the request, the person fulfilling the request shall provide the requested records free of charge to the requester.
  - (c) Performance under Subsection (5)(b) shall be extended in accordance with Subsection (5)(d) if the person fulfilling the request notifies the requester of:
    - (i) the occurrence of a force majeure event within 10 days from the day:
      - (A) the force majeure event occurs; or
      - (B) the person fulfilling the request receives notice of the request; and
    - (ii) the termination of the force majeure event within 10 days from the day the force majeure event terminates.
  - (d) In accordance with Subsection (5)(c), for a force majeure event:
    - (i) that lasts less than eight days, the person fulfilling the request shall, if the records are not postmarked or otherwise made available electronically within:
      - (A) 30 days of the day the force majeure event ends, waive 50% of the fee for providing the records; and
      - (B) 60 days of the day the force majeure event ends, waive the entire fee for providing the records;
    - (ii) that lasts at least eight days but less than 30 days, the person fulfilling the request shall, if the records are not postmarked or otherwise made available electronically within:
      - (A) 60 days of the day the force majeure event ends, waive 50% of the fee for providing the records; and
      - (B) 90 days of the day the force majeure event ends, waive the entire fee for providing the records; and
    - (iii) that lasts more than 30 days, the person fulfilling the request shall, if the records are not postmarked or otherwise made available electronically within:
      - (A) 90 days of the day the force majeure event ends, waive 50% of the fee for providing the records; and
      - (B) 120 days of the day the force majeure event ends, waive the entire fee for providing the records.
  - (e)
    - (i) A third-party service may require prepayment before sending records for a request under this Subsection (5) if the third-party service:
      - (A) determines the requester has a history of poor payment; and
      - (B) notifies the requester, within the time periods described in Subsection (5)(b)(i) and (ii), that the records will be sent as soon as the request has been prepaid.
    - (ii) The fee reductions described in Subsection (5)(d) do not apply if a third-party service complies with Subsection (5)(e)(i).
  - (f) If a third-party service does not possess or have access to the data necessary to fulfill a request, the third-party service shall notify:
    - (i) the requester that the request cannot be fulfilled; and
    - (ii) state the reasons for the third-party service's inability to fulfill the request within 30 days from the day on which the request is received by the third-party service.
  - (g) A patient's attorney, legal representative, or other third party authorized to receive records may request patient records directly from a third-party service.
- (6)
- (a) A health care provider that contracts with a third-party service to fulfill the health care provider's medical record requests shall file a statement with the Division of Professional Licensing containing:

- (i) the name of the third-party service;
  - (ii) the phone number of the third-party service; and
  - (iii) the fax number, email address, website portal address, if applicable, and mailing address for the third-party service where medical record requests can be sent for fulfillment.
- (b) A health care provider described in Subsection (6)(a) shall update the filing described in Subsection (6)(a) as necessary to ensure that the information is accurate.
- (c) The Division of Professional Licensing shall develop a form for a health care provider to complete that provides the information required by Subsection (6)(a).
- (d) The Division of Professional Licensing shall:
- (i) maintain an index of statements described in Subsection (6)(a) arranged alphabetically by entity; and
  - (ii) make the index available to the public electronically on the Division of Professional Licensing's website.
- (7) A health care provider or the health care provider's third-party service shall deliver the medical records in the electronic medium customarily used by the person fulfilling the request or in a universally readable image such as portable document format:
- (a) if the patient, patient's personal representative, or a third party authorized to receive the records requests the records be delivered in an electronic medium; and
  - (b) the original medical record is readily producible in an electronic medium.
- (8)
- (a) Except as provided in Subsections (8)(b) through (d), the per page fee in Subsections (4) and (5) applies to medical records reproduced electronically or on paper.
  - (b) The per page fee for producing a copy of records in an electronic medium shall be 50% of the per page fee otherwise provided in this section, regardless of whether the original medical records are stored in electronic format.
  - (c)
    - (i) A health care provider or a health care provider's third-party service shall deliver the medical records in the electronic medium customarily used by the health care provider or the health care provider's third-party service or in a universally readable image, such as portable document format, if the patient, patient's personal representative, patient's attorney, legal representative, or a third party authorized to receive the records, requests the records be delivered in an electronic medium.
    - (ii) A person fulfilling the request under Subsection (8)(c)(i):
      - (A) shall provide the requested information within 30 days; and
      - (B) may not charge a fee for the electronic copy that exceeds \$150 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format.
  - (d) Subject to Subsection (8)(e), in the event the requested records under Subsection (8)(c)(i) are not postmarked or otherwise made available electronically by the person fulfilling the request:
    - (i) within 30 days after the day notice is received by the person fulfilling the request, the person fulfilling the request may not charge a fee for the electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format; or
    - (ii) within 60 days after the day notice is received by the person fulfilling the request, the person fulfilling the request shall provide the requested records free of charge to the requester.
  - (e) Performance under Subsection (8)(d) shall be extended in accordance with Subsection (8)(f) if the person fulfilling the request notifies the requester of:
    - (i) the occurrence of a force majeure event within 10 days from the day:

- (A) the force majeure event occurs; or
- (B) the person fulfilling the request receives notice of the request; and
- (ii) the termination of the force majeure event within 10 days from the day the force majeure event terminates.
- (f) In accordance with Subsection (8)(e), for a force majeure event:
  - (i) that lasts less than eight days, the person fulfilling the request, if the records are not postmarked or otherwise made available electronically within:
    - (A) 30 days of the day the force majeure event ends, may not charge a fee for an electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format; and
    - (B) 60 days of the day the force majeure event ends, shall waive the entire fee for providing the records;
  - (ii) that lasts at least eight days but less than 30 days, the person fulfilling the request, if the records are not postmarked or otherwise made available electronically within:
    - (A) 60 days of the day the force majeure event ends, may not charge a fee for an electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format; and
    - (B) 90 days of the day the force majeure event ends, shall waive the entire fee for providing the records; and
  - (iii) that lasts more than 30 days, the person fulfilling the request, if the records are not postmarked or otherwise made available electronically within:
    - (A) 90 days of the day the force majeure event ends, may not charge a fee for an electronic copy that exceeds \$75 regardless of the number of pages and regardless of whether the original medical records are stored in electronic format; and
    - (B) 120 days of the day the force majeure event ends, shall waive the entire fee for providing the records.
- (9)
  - (a) On January 1 of each year, the state treasurer shall adjust the following fees for inflation:
    - (i) the fee for providing patient's records under Subsections (5)(a)(ii)(A) and (B); and
    - (ii) the maximum amount that may be charged for an electronic copy under Subsection (8)(c)(ii)(B).
  - (b) On or before January 30 of each year, the state treasurer shall:
    - (i) certify the inflation-adjusted fees and maximum amounts calculated under this section; and
    - (ii) notify the Administrative Office of the Courts of the information described in Subsection (9)(b)(i) for posting on the court's website.
- (10) Notwithstanding Subsections (4) through (6), if a request for a medical record is accompanied by documentation of a qualified claim or appeal, a health care provider or the health care provider's third-party service:
  - (a) may not charge a fee for the first copy of the record for each date of service that is necessary to support the qualified claim or appeal in each calendar year;
  - (b) for a second or subsequent copy in a calendar year of a date of service that is necessary to support the qualified claim or appeal, may charge a reasonable fee that may not:
    - (i) exceed 60 cents per page for paper photocopies;
    - (ii) exceed a reasonable cost for copies of X-ray photographs and other health care records produced by similar processes;
    - (iii) include an administrative fee or additional service fee related to the production of the medical record; or
    - (iv) exceed the fee provisions for an electronic copy under Subsection (8)(c); and



(c) shall provide the health record within 30 days after the day on which the request is received by the health care provider.

(11)

(a) Except as otherwise provided in Subsections (4) through (6), a health care provider or the health care provider's third-party service shall waive all fees under this section for an indigent individual.

(b) A health care provider or the health care provider's third-party service may require the indigent individual or the indigent individual's authorized representative to provide proof that the individual is an indigent individual by executing an affidavit.

(c)

(i) An indigent individual that receives copies of a medical record at no charge under this Subsection (11) is limited to one copy for each date of service for each health care provider, or the health care provider's third-party service, in each calendar year.

(ii) Any request for additional copies in addition to the one copy allowed under Subsection (11) (c) is subject to the fee provisions described in Subsection (10).

(12) By January 1, 2023, a health care provider and all of the health care provider's contracted third party health related services shall accept a properly executed form described in Section 26B-8-514.

Amended by Chapter 287, 2023 General Session

Amended by Chapter 330, 2023 General Session

#### **78B-5-619 Access to medical records of deceased patient.**

For purposes of Section 78B-5-618, and 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually Identifiable Health Information, a health care provider with medical records of a deceased person may recognize the deceased person's surviving spouse or an adult child as a personal representative.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78B-5-620 Calibration certificates for breathalizers.**

(1) As used in this section:

(a) "Breathalyzer" means any device used by a law enforcement agency which utilizes a person's breath to estimate blood alcohol content.

(b) "Calibration" means the manual setting of specific levels on a breathalyzer by a person trained to reset the machine to insure as accurate results as possible.

(c) "Certificate of calibration" means the document issued by the person who calibrates a breathalyzer, attesting to the accuracy of the machine.

(d) "Department" means the Department of Public Safety created in Section 53-1-103.

(e) "Digitize" means to convert content from a tangible, analog form into a digital electronic representation of that content.

(2) The department may digitize and post the digital format of certificates of calibration on its website in a secure location not available to the public.

(3) The secure location shall be available to courts and local prosecutors' offices for use in actions in which it is alleged a party was intoxicated and a law enforcement officer required the party to submit to a breathalyzer test.

(4) The department shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- (a) to provide a method for insuring the accuracy of the certificates on the website; and
- (b) providing for an attestation to the authenticity of the certificate upon download by a prosecutor or court.

Enacted by Chapter 209, 2008 General Session