

By: Bonnen of Galveston

H.B. No. 1901

A BILL TO BE ENTITLED

AN ACT

relating to the appointment of a descendant as a personal representative for the limited purpose of obtaining a deceased patient's medical records from a state hospital.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 33, Estates Code, is amended by adding Section 33.006 to read as follows:

Sec. 33.006. APPOINTMENT AS PERSONAL REPRESENTATIVE FOR THE LIMITED PURPOSE OF OBTAINING DECEASED PATIENT'S MEDICAL RECORDS FROM STATE HOSPITAL. (a) In this section:

(1) "Applicant" has the meaning provided by Section 457.001.

(2) "Patient" has the meaning provided by Section 552.0011, Health and Safety Code.

(3) "State hospital" has the meaning provided by Section 552.0011, Health and Safety Code.

(b) Venue for a proceeding to appoint an applicant as a personal representative for the limited purpose of obtaining a deceased patient's medical records from a state hospital, as described by Chapter 457, is in:

(1) the court of the county in which the deceased patient's estate was or is being administered;

(2) the court of the county in which the applicant resides; or

1 (3) the court of the county in which the state hospital
2 that the applicant is requesting medical records from is located.

3 SECTION 2. Subtitle J, Title 2, Estates Code, is amended by
4 adding Chapter 457 to read as follows:

5 CHAPTER 457. DECLARATION OF PERSONAL REPRESENTATIVE FOR THE
6 LIMITED PURPOSE OF OBTAINING DECEASED PATIENT'S MEDICAL RECORDS
7 FROM STATE HOSPITAL

8 SUBCHAPTER A. DEFINITIONS

9 Sec. 457.001. DEFINITIONS. In this chapter:

10 (1) "Adult" has the meaning provided by Section
11 [1357.002](#).

12 (2) "Applicant" means an individual seeking to be
13 appointed as a personal representative for the limited purpose of
14 obtaining a deceased patient's medical records from a state
15 hospital.

16 (3) "Patient" has the meaning provided by Section
17 [552.0011](#), Health and Safety Code.

18 (4) "State hospital" has the meaning provided by
19 Section [552.0011](#), Health and Safety Code.

20 SUBCHAPTER B. AUTHORIZATION AND PROCEDURES FOR COMMENCEMENT OF
21 PROCEEDING TO DECLARE APPLICANT AS PERSONAL REPRESENTATIVE FOR A
22 LIMITED PURPOSE

23 Sec. 457.051. GENERAL AUTHORIZATION FOR AND NATURE OF
24 PROCEEDING TO DECLARE APPLICANT AS PERSONAL REPRESENTATIVE FOR A
25 LIMITED PURPOSE. In the manner provided by this chapter, a court
26 may determine through a proceeding that an applicant qualifies as a
27 personal representative for the limited purpose of obtaining a

deceased patient's medical records from a state hospital.

Sec. 457.052. CIRCUMSTANCES UNDER WHICH APPLICANT MAY BE
DECLARED PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE. A court
may conduct a proceeding to declare an applicant as a personal
representative for the limited purpose of obtaining a deceased
patient's medical records from a state hospital if:

(1) the personal representative or personal
representatives of the deceased patient's estate are alive, but
have refused to assist the applicant in obtaining the deceased
patient's medical records from a state hospital;

(2) the personal representative or personal
representatives of the deceased patient's estate are deceased;

(3) a personal representative of the deceased
patient's estate has not been appointed on the date the application
was filed under Section 457.054;

(4) the names or locations of the personal
representative or personal representatives of the deceased
patient's estate are unknown; or

(5) the personal representative or personal
representatives of the deceased patient's estate reside in another
state or foreign country.

Sec. 457.053. PERSONS WHO MAY COMMENCE PROCEEDING TO
DECLARE APPLICANT AS PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE.

A proceeding to declare an applicant as a personal representative
for the limited purpose of obtaining a deceased patient's medical
records from a state hospital may be commenced and maintained under
a circumstance specified by Section 457.052 by an applicant who is a

1 descendant of a deceased patient of a state hospital.

2 Sec. 457.054. APPLICATION FOR PROCEEDING TO DECLARE
3 APPLICANT AS PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE. A
4 person authorized by Section 457.053 to commence a proceeding to
5 declare an applicant a personal representative for the limited
6 purpose of obtaining a deceased patient's medical records from a
7 state hospital must file an application in a court specified by
8 Section 33.006 to commence the proceeding. The application must
9 state:

10 (1) the deceased patient's name and date and place of
11 death;

12 (2) that the deceased patient had been a patient of a
13 named state hospital;

14 (3) that the applicant is a descendant of the deceased
15 patient;

16 (4) that the applicant is an adult;

17 (5) that the applicant is seeking to be appointed as a
18 personal representative for the limited purpose of obtaining the
19 deceased patient's medical records from the named state hospital;
20 and

21 (6) that, to the best of the applicant's knowledge,
22 releasing the medical records is not inconsistent with any prior
23 expressed preference of the deceased patient or personal
24 representatives of the deceased patient's estate.

25 Sec. 457.055. AFFIDAVIT SUPPORTING APPLICATION REQUIRED.

26 (a) An application filed under Section 457.054 must be supported by
27 the affidavit of the applicant.

1 (b) An affidavit of an applicant under Subsection (a) must
2 state that, to the applicant's knowledge:

3 (1) all the allegations in the application are true;
4 and

5 (2) no material fact or circumstance has been omitted
6 from the application.

7 Sec. 457.056. REQUIRED PARTIES TO PROCEEDING TO DECLARE
8 PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE. The personal
9 representative or personal representatives of the deceased
10 patient's estate, unless deceased or unknown, must be made a party
11 to a proceeding to declare an applicant as a personal
12 representative for the limited purpose of obtaining a deceased
13 patient's medical records from a state hospital.

14 SUBCHAPTER C. NOTICE OF PROCEEDING TO DECLARE APPLICANT AS PERSONAL
15 REPRESENTATIVE FOR A LIMITED PURPOSE

16 Sec. 457.101. SERVICE OF CITATION BY MAIL WHEN RECIPIENT'S
17 NAME AND ADDRESS ARE KNOWN OR ASCERTAINABLE. Citation in a
18 proceeding to declare a personal representative for the limited
19 purpose of obtaining a deceased patient's medical records from a
20 state hospital must be served by registered or certified mail on the
21 personal representative or personal representatives of the
22 deceased patient's estate unless the personal representative or
23 personal representatives of the deceased patient's estate are
24 deceased or unknown.

25 Sec. 457.102. WAIVER OF SERVICE OF CITATION. A personal
26 representative of the deceased patient's estate may waive citation
27 required by this subchapter.

1 Sec. 457.103. AFFIDAVIT OF SERVICE OF CITATION. (a) A
2 person who files an application under Section 457.054 shall file
3 with the court:

4 (1) a copy of any citation required by this subchapter
5 and the proof of delivery of service of the citation; and

6 (2) an affidavit sworn to by the applicant or a
7 certificate signed by the applicant's attorney stating:

8 (A) that the citation was served as required by
9 this subchapter;

10 (B) the name of each person to whom the citation
11 was served, if the person's name is not shown on the proof of
12 delivery; and

13 (C) if service of citation is waived under
14 Section 457.102, the name of each person who waived citation under
15 that section.

16 (b) The court may not enter an order in the proceeding to
17 declare an applicant as a personal representative for the limited
18 purpose of obtaining a deceased patient's medical records from a
19 state hospital under Subchapter E until the affidavit or
20 certificate required by Subsection (a) is filed.

21 SUBCHAPTER D. EVIDENCE IN PROCEEDING TO DECLARE APPLICANT AS

22 PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE

23 Sec. 457.151. EVIDENCE IN PROCEEDING TO DECLARE PERSONAL
24 REPRESENTATIVE FOR A LIMITED PURPOSE. (a) The court may require
25 that any testimony admitted as evidence in a proceeding to declare
26 a personal representative for the limited purpose of obtaining a
27 deceased patient's medical records from a state hospital be reduced

1 to writing and subscribed and sworn to by the witnesses,
2 respectively.

3 (b) Testimony in a proceeding to declare a personal
4 representative for the limited purpose of obtaining a deceased
5 patient's medical records from a state hospital must be taken in
6 open court, by deposition in accordance with Section 51.203, or in
7 accordance with the Texas Rules of Civil Procedure.

8 SUBCHAPTER E. JUDGMENT IN PROCEEDING TO DECLARE APPLICANT AS

9 PERSONAL REPRESENTATIVE FOR A LIMITED PURPOSE

10 Sec. 457.201. REQUIRED STATEMENTS IN JUDGMENT. The
11 judgment in a proceeding to declare a personal representative for
12 the limited purpose of obtaining a deceased patient's medical
13 records from a state hospital must state:

14 (1) the deceased patient's name;

15 (2) the state hospital that is in possession of the
16 deceased patient's medical records;

17 (3) that the applicant is a descendant of the deceased
18 patient;

19 (4) that the applicant is an adult;

20 (5) that the applicant is seeking to be appointed as a
21 personal representative for the limited purpose of obtaining the
22 deceased patient's medical records from a state hospital;

23 (6) that releasing the medical records is not
24 inconsistent with any prior expressed preference of the deceased
25 patient or the personal representatives of the deceased patient's
26 estate that is known to the state hospital; and

27 (7) that the state hospital must release the deceased

1 patient's medical records to the applicant.

2 Sec. 457.202. FINALITY AND APPEAL OF JUDGMENT. The
3 judgment in a proceeding to declare a personal representative for
4 the limited purpose of obtaining a deceased patient's medical
5 records from a state hospital is a final judgment.

6 Sec. 457.203. LIMITATION OF LIABILITY OF CERTAIN PERSONS
7 ACTING IN ACCORDANCE WITH JUDGMENT. (a) The judgment in a
8 proceeding to declare a personal representative for the limited
9 purpose of obtaining a deceased patient's medical records from a
10 state hospital is conclusive.

11 (b) A state hospital is not liable to another person for
12 releasing to the applicant a deceased patient's medical records in
13 good faith after a judgment is entered that declares the applicant a
14 personal representative for the limited purpose of obtaining a
15 deceased patient's medical records from a state hospital.

16 Sec. 457.204. FILING AND RECORDING OF JUDGMENT. (a) A
17 certified copy of the judgment in a proceeding to declare a personal
18 representative for the limited purpose of obtaining a deceased
19 patient's medical records from a state hospital may be filed for
20 record in the office of the county clerk of the county in which the
21 suit is filed.

22 (b) On the filing of a judgment in accordance with
23 Subsection (a), the judgment constitutes constructive notice of the
24 facts stated in the judgment.

25 Sec. 457.205. RECOGNITION OF PATIENT'S EXPRESSED
26 PREFERENCE. A state hospital may not release to the applicant the
27 medical records of the deceased patient upon a court issuing a

1 judgment that declares the applicant a personal representative for
2 the limited purpose of obtaining the deceased patient's medical
3 records from a state hospital if releasing the medical records to
4 the applicant is inconsistent with the prior expressed preference
5 of the deceased patient or personal representative of the deceased
6 patient's estate.

7 Sec. 457.206. DURATION OF APPOINTMENT. The appointment of
8 an applicant as a personal representative for the limited purpose
9 of obtaining a deceased patient's medical records from a state
10 hospital terminates when the applicant obtains the medical records
11 from the state hospital.

12 SECTION 3. This Act takes effect September 1, 2019.