

Louisiana State Laws on Optical Images

Rule 101. Scope

These rules govern proceedings in the courts of this State to the extent and with the exceptions stated in Rule 1101.

Rule 801. Definitions

As used in this Article:

(a) Statement. "Statement" means (i) an oral or written assertion or (ii) nonverbal conduct of an individual who intends it as an assertion.

(b) Declarant. "Declarant" means an individual who makes a statement.

(c) Hearsay. "Hearsay" means a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

(d) Statements that are not hearsay. A statement is not hearsay if:

(1) Previous statement by witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (i) inconsistent with the declarant's testimony and, if offered in a criminal proceeding, was given under oath and subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, (ii) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive, or (iii) one of identification made shortly after perceiving the individual identified.

(2) Admission by party-opponent. The statement is offered against a party, and is (i) the party's own statement, in either an individual or a representative capacity, (ii) a statement of which the party has manifested adoption or belief in its truth, (iii) a statement by an individual authorized by the party to make a statement concerning the subject, (iv) a statement by the party's agent or servant concerning a matter within the scope of the agency or employment, made during the existence of the relationship, or (v) a statement by a co-conspirator of a party during the course and in furtherance of the conspiracy.

Rule 803- Hearsay Exceptions; Availability of Declarant Immaterial

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(5) Recorded recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in the witness' memory and

to reflect that knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of regularly conducted business activity. A memorandum, report, record, or data compilation, in any form, of acts, events, conditions, opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness. As used in this paragraph, "business" includes business, institution, association, profession, occupation, and calling of every kind, whether or not conducted for profit.

(7) Absence of entry in records kept in accordance with paragraph (6). Evidence that a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with

paragraph (6), to prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a memorandum, report, record, or data compilation was regularly made and preserved, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public records and reports. Unless the sources of information or other circumstances indicate lack of trustworthiness, records, reports, statements, or data compilations in any form of a public office or agency setting forth its regularly conducted and regularly recorded activities, or matters observed pursuant to duty imposed by law and as to which there was a duty to report, or factual findings resulting from an investigation made pursuant to authority granted by law. The following are not within this exception to the hearsay rule: (i) investigative reports by police and other law enforcement personnel, except when offered by an accused in a criminal case; (ii) investigative reports prepared by or for a government, a public office, or an agency when offered by it in a case in which it is a party; (iii) factual findings offered by the government in criminal cases; and (iv) factual findings resulting from special investigation of a particular complaint, case, or incident, except when offered by an accused in a criminal case.

(9) Records of vital statistics. Records or data compilations, in any form, of births, fetal deaths, deaths, or marriages, if the report thereof was made to a public office pursuant to requirements of law.

(10) Absence of public record or entry. To prove the absence of a record, report, statement, or data compilation, in any form, or the nonoccurrence or nonexistence of a matter of which a record, report, statement, or data compilation, in any form, was regularly made and preserved by a public office or agency, evidence in the form of a certification in accordance with Rule 902, or testimony, that diligent search failed to disclose the record, report, statement or data compilation, or entry.

(11) Records of religious organizations. Statements of births, marriages, divorces, death, legitimacy, ancestry, relationship by blood or marriage, or other similar facts of personal or family history, contained in a regularly kept record of a religious organization.

(12) Marriage, baptismal, and similar certificates. Statements of fact contained in a certificate that the maker performed a marriage or other ceremony or administered a sacrament, made by a clergyman, public official, or other person authorized by the rules or practices of a religious organization or by law to perform the act certified, and purporting to have been issued at the time of the act or within a reasonable time thereafter.

(13) Family records. Statements of fact concerning personal or family history, contained in family Bibles, genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts, or tombstones, or the like.

(14) Records of documents affecting an interest in property. The record of a document purporting to establish or affect an interest in property, as proof of the content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed, if the record is a record of a public office and an applicable statute authorizes the recording of documents of that kind in that office.

(15) Statements in documents affecting an interest in property. A statement contained in a document purporting to establish or affect an interest in property, if the matter stated was relevant to the purpose of the document, unless dealings with the property, since the document was made have been inconsistent with the truth of the statement or the purport of the document.

(16) Statements in ancient documents. Statements in a document in existence twenty years or more the authenticity of which is established.

(17) Market reports, commercial publications. Market quotations, tabulations, lists, directories, or other published compilations, generally used and relied upon by the public or by persons in particular occupations.

(18) Learned treatises. To the extent called to the attention of an expert witness upon cross-examination or relied upon by the witness in direct examination, statements contained in published treatises, periodicals, or pamphlets on a subject of history, medicine, or other science or art, established as a reliable authority by testimony or admission of the witness or by other expert testimony or by judicial notice. If admitted, the statements may be read into evidence but may not be received as exhibits.

(24) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance to

provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

(b) Hearsay exceptions. The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(6) Other exceptions. A statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (i) the statement is offered as evidence of a material fact; (ii) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (iii) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to prepare to meet it, [the proponent's] intention to offer the statement and the particulars of it, including the name and address of the declarant.

Rule 901. Requirement of Authentication or Identification

(a) General provision. The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

(b) Illustrations. By way of illustration only, and not by way of limitation, the following are examples of

authentication or identification conforming with the requirements of this rule:

(7) Public records or reports. Evidence that a writing authorized by law to be recorded or filed and in fact recorded or filed in a public office, or a purported public record, report, statement, or data compilation, in any form, is from the public office where items of this nature are kept.

(8) Ancient documents or data compilation. Evidence that a document or data compilation, in any form, (i) is in such condition as to create no suspicion concerning its authenticity, (ii) was in a place where it, if authentic, would likely be, and (iii) has been in existence 20 years or more at the time it is offered.

(9) Process or system. Evidence describing a process or system used to produce a result and showing that the process or system produces an accurate result.

(10) Methods provided by statute or rule. Any method of authentication or identification provided by the Supreme Court of this State or by a statute or as provided in the Constitution of this State.

Rule 902. Self-Authentication

Extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(1) Domestic public documents under seal. A document bearing a seal purporting to be that of the United States, or of any state, district commonwealth, territory or insular possession thereof or the Panama Canal Zone, or the Trust Territory of the Pacific Islands, or of a political subdivision, department, officer, or agency thereof and a signature purporting to be an attestation or execution.

(2) Domestic public documents not under seal. A document purporting to bear a signature in the official capacity of an officer or employee of any entity designated in paragraph (1), having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity, and that the signature is genuine.

(3) Foreign public documents. A document purporting to be executed or attested in the official capacity of an individual authorized by the laws of a foreign country, to make the execution or attestation, and accompanied by a final certification as to the genuineness of the signature and official position (i) of the executing or attesting individual, or (ii) of any foreign official whose certificate of genuineness of signature and official position relates to the execution or attestation or is in a chain of certificates of genuineness of signature and official position relating to the execution or attestation. A final certification may be made by a secretary of embassy, or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country assigned or accredited to the United States. If reasonable opportunity has been given to all parties to investigate the authenticity and accuracy of official documents, the court may for good cause shown order that they be treated as presumptively authentic without final certification or permit them to be evidenced by an attested summary with or without final certification.

(4) Certified copies of public records. A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with paragraph (1), (2), or (3) or complying with any law of the United States or of this State.

(5) Official publications. Books, pamphlets, or other publications issued by public authority.

(6) Newspapers and periodicals. Printed material purporting to be newspapers or periodicals.

(8) Acknowledged documents. Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a notary public or other officer authorized by law to take acknowledgments.

(9) Commercial paper and related documents. Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

(10) Presumptions created by law. Any signature, document, or other matter declared by any law of the United States or of this State, to be presumptively or prima facie genuine or authentic.

(11) Certified records of regularly conducted activity. The original or a duplicate of a record of regularly conducted activity, within the scope of Rule 803(6), which the custodian thereof or

another qualified individual certifies (i) was made, at or near the time of the occurrence of the matters set forth, by (or from information transmitted by) a person with knowledge of those matters, (ii) is kept in the course of the regularly conducted activity, and (iii) was made by the regularly conducted activity as a regular practice, unless the sources of information or the method or circumstances of preparation indicate lack of trustworthiness; but a record so certified is not self-authenticating under this subsection unless the proponent makes an intention to offer it known to the adverse party and makes it available for inspection sufficiently in advance of its offer in evidence to provide the adverse party with a fair opportunity to challenge it. As used in this subsection, "certifies" means, with respect to a domestic record, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record, a written declaration signed in a foreign country. which, if falsely made, would subject the maker to criminal penalty under the laws of that country.. The certificate relating to a foreign record must be accompanied by a final certification as to the genuineness of the signature and official position (i) of the individual executing the certificate or (ii) of any foreign official who certifies the genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify, the genuineness of signature and official position of the executing individual. A final certification must be made by a secretary of embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

Rule 1001. Definitions

For purposes of this Article the following definitions are applicable:

(1) Writings and recordings. "Writings" and "recordings" consist of letters, words, sounds, or numbers, or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation,

(2) Photographs. "Photographs" include still photographs, X-ray films, video tapes, and motion pictures.

(3) Original. An "original" of a writing or recording is the writing or recording itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

(4) Duplicate. A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent techniques which accurately reproduce the original.

Rule 1002. Requirement of Original

To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by rules adopted by the Supreme Court of this State or by statute.

Rule 1003. Admissibility of Duplicates

A duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original.

Rule 1004. Admissibility of Other Evidence of Contents

The original is not required, and other evidence of the contents of a writing, recording, or photograph is admissible if:

- (1) Originals lost or destroyed.** All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
- (2) Original not obtainable.** No original can be obtained by any available judicial process or procedure;
- (3) Original in possession of opponent.** At a time when an original was under the control of the party against whom offered, he was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing; and he does not produce the original at the hearing; or
- (4) Collateral matters.** The writing, recording or photograph is not closely related to a controlling issue.

Rule 1005. Public Records

The contents of an official record, or of a document authorized to be recorded or filed and actually recorded or filed, including data compilations in any form, if otherwise admissible, may' be proved by copy, certified as correct in accordance with Rule 902 or testified to be correct by a witness who has compared it with the original. If a copy complying with the foregoing cannot be obtained by the exercise of reasonable diligence, other evidence of the contents may be admitted.

Rule 1006. Summaries

The contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court may be presented in the form of a chart, summary, or calculation. The originals, or duplicates, shall be made available for examination or copying, or both, by other parties at a reasonable time and place. The court may order that they be produced in court.

Rule 1007. Testimony or Written Admission of Party

Contents of writings, recordings, or photographs may be proved by the testimony or deposition of the party against whom offered or by his written admission, without accounting for the nonproduction of the original.

Rule 1101. Rules Applicable

(a) Except as otherwise provided in subdivision (b), these rules apply to all actions and proceedings in the [courts of this State].

(b) Rules inapplicable. The rules other than those with respect to privileges do not apply in the following situations:

(1) Preliminary questions of fact. The determination of questions of fact preliminary to admissibility of evidence when the issue is to be determined by the court under Rule 104(a).

(2) Grand jury. Proceedings before grand juries.

(3) Miscellaneous proceedings. Proceedings for extradition or rendition; [preliminary examination] detention hearing in criminal cases: sentencing, or granting or revoking probation: issuance of warrants for arrest, criminal summonses, and search warrants: and proceedings with respect to release on bail or otherwise.

(4) Contempt proceedings in which the court may act summarily.

§ 6:127. Retention of Records of Financial Institutions; Microfilm

A. The commissioner may by regulation prescribe periods of time for the retention of records of any financial institution subject to his supervision. Records that have been retained for the period so prescribed may thereafter be destroyed, and no liability shall thereby arise against the financial institution destroying them. In any legal action in which any such records may be called in question or be demanded of any financial institution or any office or employee thereof, a showing that the period so prescribed has elapsed shall be a sufficient defense for the failure to produce them by reason of their destruction.

B. Any financial institution may install and use any microfilm or photostatic copying or similar machinery and apparatus for the purpose of reproducing any of its files and records as provided in this Section. When so reproduced, the microfilm or photostatic or other copy of any such file or record shall be deemed an original record for all purposes and shall be admissible in evidence in all courts. A facsimile, exemplification, or certified copy thereof shall, for all purposes, be deemed a transcript, exemplification, or certified copy of the original. A microfilm or photostatic or other copy of an item or instrument as provided in this Section may be treated by the financial institution as if it were the original item or instrument for all purposes.

C. Any records required to be retained pursuant to this Section or regulations promulgated hereunder may be retained by any duplicate recording or reproduction of an original record from any photograph, photostat, microfilm, microcard, miniature or microphotograph, computer printout, electronically stored data or image, or other process which accurately reproduces or forms a durable medium for accurately and legibly reproducing an unaltered image or reproduction of the original record.

§ 13:3733. Business Records; Reproduction by Photographic, Photostatic or Miniature Photographic Process; Certification

A. Any business may cause any or all records kept by such business in regular course of its operation to be recorded, copied or reproduced by any photographic, photostatic or miniature photographic process which correctly, accurately and permanently copies, reproduces or forms a medium for copying or reproducing the original record on a film or other durable material, and

such business may thereafter dispose of the original record. provided that every original record pertaining to any claim, tax, or report due the state of Louisiana or of its agencies shall be preserved for five years from the 31st day of December of the year in which such claim arose, or such tax or report was due.

B. Any such photographic, photostatic or miniature photographic copy or reproduction shall be deemed to be an original record for all purposes and shall be treated as an original record in all courts or administrative agencies for the purpose of its admissibility in evidence. An enlargement or facsimile of such reproduction is likewise admissible in evidence if the original reproduction is in existence and available for inspection under the direction of the court.

C. For purposes of this Section "business" means and includes each business, industry, profession, occupation and calling of every kind.

D. Whenever any such photographic, photostatic, or miniature photographic copy or reproduction shall be certified with a certificate reading substantially as follows, it shall be deemed an original or authentic copy of the original record or document for purposes of its admissibility under Louisiana law, and specifically as authentic evidence for purposes of Code of Civil Procedure Act. 2636

§ 44:137. Photostatic, Photographic, Microfilm, or Other Photographic Copies of Records; Indexes of Conveyance and Mortgage Records

A. In all cases where the clerks of court and recorders of the various parishes throughout the state, Orleans Parish excepted, are required by law to make records of filings, documents, pleadings, and all other written instruments, except indexes and registers of the same. such records may be made by any method of photorecording, photocopying, microfilming, or other photographic method of reproduction. However, the film stock used in making photographic or microphotographic copies and the processing of the copies shall comply with the standards of the American National Standards Institute for permanent record photographic microcopying film.

B. Whenever recordation by means of photorecording, photocopying, microfilming, or other photographic method of reproduction is used, any requirement expressed or implied in law for the above-mentioned records, other than indexes and registers of the same, to be maintained in a book or bound volume shall be satisfied by the appropriate storage unit of microfilm or other photographic method employed; provided that the originals of conveyances, probate, mortgage, and other permanent records required by existing law to be kept for all time shall continue to be maintained in a book or bound volume and shall remain subject to examination and copying under the provisions of R. S. 44:31, et seq., and other applicable laws.

C. Notwithstanding the provisions of Subsections A and B of this Section or any other provision of law to the contrary, clerks of court and recorders may make indexes of conveyance and mortgage records by any method of photorecording photocopying, microfilming, or other photographic method of reproduction; however. The standards described in Subsection A of this Section shall apply.

§ 44:39. Microfilm and Electronic Digitized Records; Use as Evidence

A. All persons and public bodies having custody or control of any public records of the state of Louisiana or any of its subdivisions may utilize any appropriate form of the microphotographic process, or an electronic digitizing process capable of reproducing an unalterable image of the original source document, for the recordation, filing, and preservation of all existing public records, forms, and documents or records, forms, and documents hereafter accumulated which pertain to their functions and operations in order to maintain efficient and economical records management programs and to conserve storage space, provided that the use of such microphotographic or electronic digitizing processes are not otherwise prohibited by law and that all microforms produced comply with standards established by the division of archives, records management, and history of the Department of State in accordance with the provisions of R. S. 44:415.

B. Any microfilm or electronically digitized copy, when satisfactorily identified, shall be deemed to be an original itself, and shall be admissible in evidence in all courts or administrative proceedings in any agency, whether the original document is in existence or not, and an enlargement or facsimile of a reproduction is likewise admissible in evidence, if the original reproduction is in existence and available for inspection under direction of the court or the administrative agency. Original records shall remain subject to subpoena.

§ 47: 1506.1. Microfilm or Microfiche Records; Electronic Digitized Records

A. Permission is hereby given to the secretary of the Department of Revenue and Taxation to install and use microfilm or microfiche machinery or electronic digitizing machinery and apparatus in the recordation, filing, and preservation of all records, forms, and documents referred to in § 1506 of Title 47 of the Louisiana Revised Statutes, in order to conserve storage space where the use of such microfilm or microfiche machinery or electronic digitizing machinery and apparatus is not otherwise prohibited by law.

B. Such microfilm, microfiche, or electronic digitized copy shall be deemed to be an original record for all purposes. and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification, or a certified copy thereof shall, for all purposes, be deemed to be a transcript, exemplification; or certified copy of the original.

§ 40:2144. Hospital Records and Retention Act

A. As used in this Section:

(1) "Health care provider" means a hospital, as defined in Paragraph (3) hereof, and means a person, corporation, facility, or institution licensed by the state to provide health care or professional services as a physician, hospital, ambulatory surgical center, dentist, registered or licensed practical nurse, pharmacist, optometrist, podiatrist, chiropractor, physical therapist or psychologist, and/or an officer, employee or agent thereof acting in the course and scope of his employment.

(2) "Patient" means a natural person who receives health care from a licensed health care provider.

(3) "Hospital" means any hospital as defined in R.S. 40:2102 and ambulatory surgical center as defined in R.S. 40:2133.

(4) "Representative" means the parent of a minor patient, tutor, curator, trustee, attorney, succession representative, or other legal agent of the patient.

(5) "Hospital record" or "hospital chart" means a compilation of the reports of the various clinical departments within a hospital, as well as reports from health care providers, as are customarily catalogued and maintained by the hospital medical records department. Hospital records include reports of procedures such as X-rays and electrocardiograms, but they do not include the image or graphic matter produced by such procedures.

B. Hospital records are subject to reasonable access to the information contained therein by the patient or his authorized representative as hereinafter provided.

C. The patient or his authorized representatives may request and obtain copies of his hospital records in the manner set forth in Subsection D.

D. Upon request in writing signed and dated by the person initiating the request, the hospital shall, except for good cause shown, such as medical contraindication, furnish the records as soon as practicable and upon payment of the reasonable cost of so providing. Any hospital, its employees, officers, or agents acting in good faith, shall be justified in relying on the reasonable representations of any person making a request. Such hospital, employees, officers, or agents, except for their own negligence, shall not be held liable in damages by reason of their compliance with such request or their inability to fulfill the request.

E. (1) A hospital record or hospital chart may be kept in any written, photographic, microfilm, or other similar method or may be kept by an}, magnetic, electronic, optical, or similar form of data compilation which is approved for such use in a rule promulgated by the Department of Health and Hospitals. No magnetic, electronic, optical, or similar method shall be approved unless it provides reasonable safeguards against erasure or alteration.

(2) A hospital may, at its discretion, cause any hospital record or part thereof to be microfilmed, or otherwise reproduced, in order to accomplish efficient storage and preservation of hospital records.

F. (1) Hospital records shall be retained by hospitals in their original, microfilmed, or similarly reproduced form for a minimum period of ten years from the date a patient is discharged.

(2) Graphic matter, images, X-ray films and like matter that were necessary to produce a diagnostic or therapeutic report shall be retained, preserved and properly stored by hospitals in their original, microfilmed, or similarly reproduced form for a minimum period of three years from the date a patient is discharged. Such graphic matter, images, X-ray film and like matter shall be retained for longer periods when requested in writing by any one of the following:

(a) An attending or consultant physician of the patient.

(b) The patient or someone acting legally in his behalf.

(c) Legal counsel for a party having an interest affected by the patient's medical records.

G. A certified copy of the hospital record or graphic matter, images, X-ray film and like matter shall be deemed to be an original for all purposes, and shall be admissible in evidence in all courts or administrative agencies as if it were the original.

H. (1) Subject to such guidelines and limitations as may be promulgated by the Department of Health and Hospitals, electronic signatures by licensed health care providers on medical records are hereby authorized.

(2) The Department of Health and Hospitals may promulgate rules to regulate the use of electronic signatures. Such rules may contain any of the following:

(a) Limitation on which documents may be signed electronically, but any such limitation shall not prohibit the use of such signatures on discharge summaries and attestations.

(b) Security requirements, which may include the following:

(i) The use of alphanumeric or similar codes, fingerprints, or other identifying methods.

(ii) Prohibition against disclosure of codes or other identifiers to other persons.

(iii) Health care provider responsibility, for unauthorized signatures.

(3) No rule promulgated by the Department of Health and Hospitals pursuant to this Subsection shall contradict or be in conflict with the rules or guidelines on the subject promulgated by the Health Care Financing Administration of the United States or of the standards published by the Joint Commission on Accreditation of Health Care Organizations.

§ 51:710. Commissioner of Securities; Powers of Commissioner and Employees; Compensation and Expenses; Assistant Commissioner

A. The administration of the provisions of this Part shall be vested in the commissioner of financial institutions, who is designated commissioner of securities.

B. The commissioner shall have the authority to administer oaths in and to prescribe forms for all matters arising under this Part. The commissioner shall cooperate with the administrators of the securities laws of other states and of the United States with a view to assisting those administrators in the enforcement of their securities laws and to achieving maximum uniformity, in the interpretation of like provisions of the laws administered by them and in the forms which are required to be filed under such laws.

C. The commissioner shall have authority to employ examiners, clerks and stenographers, and other employees as the administration of that portion of the Part vested in him may require. The commissioner shall also have authority to appoint and employ investigators whose salaries shall be fixed by the commissioner with the approval of the governor and who shall have, in any case that there is reason to believe a violation of this Part has occurred or is about to occur, the right and power to serve subpoenas and to swear out and execute search warrants and arrest warrants. The commissioner shall designate one of the investigators as chief state investigator and this person

shall act at the will of the commissioner to perform any duty required by him as commissioner of financial institutions and commissioner of securities.

D. The commissioner shall have the power to make such rules and regulations from time to time as he may deem necessary and proper for the enforcement of this Part, such rules and regulations shall be adopted. promulgated and contested as provided in the Administrative Procedure Act.

E. The commissioner or any persons employed by him shall be paid, in addition to their regular compensation, the transportation fare, board, lodging, and other traveling expenses necessarily and actually incurred by each of them in the performance of their duties under this Part.

F. The commissioner shall appoint, with the approval of the governor, a person as deputy commissioner and delegate such of his powers and duties under this Part to such deputy commissioner as he desires.

G. The commissioner shall appoint, with the approval of the governor, an attorney whose salary shall be fixed by the commissioner with the approval of the governor.

H. The commissioner may designate filing depositories for all records required to be filed and maintained under this Part. Such records may be maintained in original form or by means of microfilm, microfiche, microphotographic reproduction, photographic reproduction, word processing, computerization, or other acceptable reproductive methods. The commissioner is further authorized to participate, in whole or in part, in a Central Registration Depository.' (CRD) or similar system, in cooperation with the National Association of Securities Dealers, Inc. (NASD), other states, and the United States, to the extent he deems participation to be in the public interest of this state.

§ 44:401. Division of Archives, Records Management, and History

The division of archives, records management, and history is hereby created and established as a division of the Department of State, to perform all duties, functions, and responsibilities and to exercise all authority or authorities heretofore assigned to the State Archives and Records Service by providing for a statewide system of managing and preserving government records which will meet informational requirements and serve the rights and interests of government and its citizens, and specifically to:

- (1) Provide that these records are created and managed efficiently, economically, and in a manner to insure their integrity and availability..
- (2) Preserve for use, by the government and citizens, those records which, because of their intrinsic, historical, or evidentiary values, become a part of the legacy government leaves for the state.

§ 44:402. Definitions

For the purpose of this Chapter:

- (1) "Secretary" means secretary of state.

(2) "State archivist" means the state archivist and director of the division of archives, records management, and history, appointed by the secretary, to serve as director of that division and as state archivist.

(3) "Division" means the division of archives, records management, and history.

(4) "Records" means all documents, papers, letters, books, drawings, maps, plats, photographs, magnetic or optical media, microfilm, microphotograph, motion picture film, or other document or any other material, regardless of physical form or characteristic, generated or received under law or in connection with the transaction of official business, or preserved by an agency or political subdivision because of other informational or legal value. This term shall not be construed to include library and museum material developed or acquired and preserved solely for reference or exhibition purposes, extra copies maintained for convenience in reference or stocks of standard publications, or processed documents.

(5) "Agency" means any state, parish and municipal office, department, division, board, bureau, commission, authority, or other separate unit of state, parish, or municipal government created or established by the constitution, law resolution, proclamation, or ordinance.

(6) "State archives" means an establishment maintained by the division to administer a program to provide for the preservation of those records and other papers that have been determined by the state archivist to have sufficient historical fiscal, or legal value to warrant their continued preservation by the state, whether they have been deposited with the state archives or are to be maintained in agency custody.

(7) "Records management" means the systematic application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records for the purpose of reducing costs and improving efficiency of records keeping. "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.

(8) "Records center" means an establishment maintained by the division primarily for the economical storage, processing, servicing, and security of inactive public records that must be retained for varying periods of time but which need not be held in agency offices for the entire periods.

(9) "Retention and disposal schedule" means a set of disposition instructions prescribing how long, in what location, under what conditions, and in what form records series shall be kept.

(10) "Vital records" means any record essential to either or both the resumption or continuation of operations, to verification or re-creation of the legal and financial shams of government in the state, or to the protection and fulfillment of obligations to citizens of the state.

(11) "Destruction" means to destroy by shredding, burning, or other suitable means of obliteration.

(12) "Disposal" means destruction in any manner approved by the environmental authority; or, transferal into the custody of the repository designated by the state archivist as most appropriate for continued maintenance.

§ 44:403. Counsel

Legal services for the division shall be provided by the secretary or the attorney general and the various district attorneys in their various districts.

§ 44:404. State Archivist

The secretary. will appoint a professionally qualified state archivist and director of the division of archives, records management, and history who shall have administrative responsibility for the division and shall serve as the archivist of the state of Louisiana. All administrative duties and functions of this Chapter shall be exercised by the state archivist acting under the direction and supervision of the secretary.

§ 44:405. Powers and Duties

A. The secretary shall enforce the provisions of this Chapter and pursuant thereto may promulgate, or authorize the state archivist to promulgate, policies not inconsistent with law and in accordance with the Administrative Procedure Act, establishing:

(1) Procedures for the compiling and submitting to the division heretofore created, of lists and schedules of records proposed for disposal.

(2) Procedures for the disposal of records authorized for disposal, whether in agency custody or in the possession of the division.

(3) Procedures for the reproduction of public records by photographic, microphotographic, or other appropriate process when necessary to assure the preservation thereof.

(4) Procedures for preservation, repair, treatment, and restoration of old. discolored, worn, fragile, faded. Or torn documents, or records which are declared by the state archivist to have historical or archival value, whether stored in the state archives, the records center, or held in the custody of the repository agency.

B. It is intended that such policies, roles, and regulations be formulated after surveying and evaluating the circumstances of and receiving advice from the various state agencies and the governing authorities of the various subdivisions of the state, Such policies, rules, and regulations thereafter shall be binding upon all the agencies of the state and its subdivisions. The secretary shall employ such personnel, purchase such equipment, and provide such facilities as may be required in the execution of the powers and duties imposed upon the secretary. The secretary, shall perform any acts deemed necessary, legal, and proper to carry. out the duties and responsibilities imposed upon him pursuant to the authority granted herein.

§ 44:406. Collection of Records

The state archivist shall collect court records, official documents, reports, newspapers, church records, private papers, and other historical materials and data pertaining to the colonial, territorial, and statehood periods from the earliest times to the present. to have said documents, records, and material properly repaired, filed, indexed, and preserved, whether physically or by micrographic or other appropriate process or both, and, when deemed desirable, edited and published to encourage historical investigation and research in the history of the state. When original documents or records are to be maintained in the possession of a custodial agency, the division may provide for the making of a microphotographic security copy or other appropriate facsimile for deposit with the state archives.

§ 44:407. Records Management; Reports

The state archivist is authorized to make continuing surveys of government records and records management and disposal practices and obtain reports thereof from the state and local governmental agencies: to promulgate, on the basis of information obtained from those surveys and reports. such policies. rules. and regulations as are necessary to produce improved records management practices and controls in the various state and local agencies, including the central storage or disposition of records not needed by such agencies for their current use: and to report to the legislature and to the governor from time to time on such activities. Such reports shall be issued at the discretion of the state archivist or as prescribed by the governor or the legislature.

§ 44:408. Archives and Records Center Building; Duty. Custody and Control

A. The secretary shall have custody and control of the Louisiana State Archives and its contents to house and facilitate operations of the various archives and records management programs, including the records center establishment. and through the Louisiana State Building Authority, or its successors shall have authority to design, build, purchase, lease, maintain, operate, protect, and improve buildings or facilities used for the storage of inactive records of state and local agencies of Louisiana.

B. The records center or centers shall accept all records transferred to it or them through the operation of retention schedules approved by the state archivist. provide secure storage and reference service for the same, and submit written notice to inform the applicable agency of intended destruction or disposal of records in accordance with approved retention schedules.

C. Confidential or restricted records shall remain confidential or restricted and, whenever usage of records in the custody of the division is restricted by or pursuant to law or for reasons of security and the public interest, such records shall be inspected, surveyed, or otherwise used only in accordance with law and the policies and regulations imposed by the secretary acting through the state archivist.

D. Records listed for disposal shall either be destroyed in any manner approved by the environmental authority or transferred in accordance with established policies to the most appropriate repository.

§ 44:409. Appointment of Advisory Groups

The secretary may from time to time appoint advisory groups to more effectively obtain the best professional thinking of groups including but not limited to the bar, historians, political scientists, accountants, genealogists, patriotic groups, associations of public officials, et cetera, concerning the steps to be taken with regard to any particular group or type of records. Advisory group members shall receive no salary.

§ 44:410. Records Management Programs; Policies and Principles

A. The secretary, acting through the state archivist, shall, with due regard to the program activities of the state and local agencies concerned prescribe policies and principles to be followed by state and local governmental agencies in the conduct of their records management programs and make provision for the economical and efficient management of records by state and local governmental agencies; by analyzing, developing, prescribing, and coordinating the implementation of standards, procedures, and techniques designed to improve the management of records, to insure the maintenance and security of records deemed appropriate for preservation, and to facilitate the segregation and disposal of records of temporary value; and by effecting the efficient and economical utilization of space, equipment, and supplies needed for the purpose of creating, maintaining, storing, and servicing records.

B. The division also shall formulate and execute a program to inventory, schedule, and microfilm official parish, municipal, and other local records which are determined by the state archivist to have permanent value to provide safe storage for microfilm copies of such records. and to give advice and assistance to local officials in their programs for creating, preserving, filing, and making available public records in their custody. The division may assist any state, parish, municipal, or other local agency to implement a records program by providing records analysts and consultants in records management, conducting surveys in order to recommend more efficient records management practices and providing training for records management personnel.

§ 44:411. Selective Retention of Records; Actions for Recovery of Records

A. The secretary, acting through the state archivist, shall establish standards for the selective retention of records of continuing value, and monitor state and local agencies in the application of such standards to all records in their custody. To facilitate this application:

(1) The head of each agency shall submit to the state archivist, in accordance with the policies, rules, and regulations prescribed by the secretary and the implementational standards and procedures established by the state archivist, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been created or received by the agency.

(2) The head of each agency shall also submit to the state archivist lists of state records in the custody of that agency which are not required for the transaction of current business and which lack sufficient administrative, legal or fiscal value to warrant further retention and request that the state archivist authorize appropriate disposal.

(3) Upon termination of employment with the state, unless otherwise directed by law, each agency head prior to transfer of his records to a successor, shall notify the state archivist to arrange for an

appraisal to determine which record or records series should be retained in the agency office and which should be transferred to the custody of the division for permanent retention.

(4) The records of any state agency, upon termination of its existence or functions, shall automatically be transferred into the custody of the division, unless otherwise directed by law.

B. The secretary, acting through the state archivist, shall also notify the head of any such agency of any actual impending, or threatening unlawful removal, defacing, alteration, or destruction of records in the custody of such agency that shall come to his attention, and initiate action through the attorney general for the recovery of such records as shall have been unlawfully removed and for such other redress as may be provided by law. In any case in which records or other materials of actual or potential archival significance are determined by the state archivist to be in jeopardy of destruction or deterioration, and such material is not essential to the conduct of daily business in the agency of origin, the secretary shall have authority to require and schedule transfer of said reports to the physical and legal custody of the division and the state archivist.

C. To insure that the above enumerated reports and notifications are submitted and implemented, the chief executive officer of each state agency shall designate a records officer to act as liaison between the division and the agency on all matters relating to records management.

§ 44:412. Agency Head to Maintain Active Records Management Programs; Use of Records Center by State and Subdivisions

A. The head of each agency of the state and its subdivisions shall establish and maintain an active, continuing program for the economical and efficient management of the records of the agency. Such program shall provide for: effective controls over the creation, maintenance, and use of records in the conduct of current business; cooperation with the division in applying standards, procedures, and techniques designed to improve the management of records, promote the maintenance and security of records deemed appropriate for preservation, and facilitate the segregation and disposal of records of temporary, value; and compliance with the provisions of this Chapter and the rules and regulations of the division.

B. Whenever the head of an agency of the state or its subdivisions is notified of the substantial economies or increased operating efficiency that can be effected thereby, he shall provide for the storage, processing, and servicing of records that are appropriate therefor in the records center maintained and operated by the division or, when approved by the director, in such location maintained and operated by the head of such agency.

§ 44:413. Surveys and Inspections

The state archivist is authorized to inspect or survey the records of any state or local agency, as well as to make surveys of records management and records disposal practices in such agencies, and he shall be given full cooperation of officials and employees of agencies in such inspection and surveys; provided, that records, the use of which is restricted by or pursuant to law or for reasons of security or the public interest, shall be inspected or surveyed only in accordance with law, and the policies established by the secretary, acting through the state archivist and the division.

§ 44:414. Interim Records Centers; Photostating and Repair

The secretary is authorized to established an interim records center or centers and, acting through the state archivist and the division, to promulgate policies, rules, and regulations and institute and implement programs for the storage, processing, and servicing of records of state and local governmental agencies pending their deposit in the state archives or the records center or their disposition in any other manner authorized by law; and to establish, maintain, and operate facilities for microfilming, photostating, indexing, deacidification, decontamination, archival lamination and encapsulation, and any other records repair and rehabilitation services for state and local agencies.

§ 44:415. Centralized Microfilm Service

The microfilm section of the records management program of the division shall be the centralized microfilm center for the state. All state agencies lacking existing internally established microfilming systems of their own. and those state agencies whose equipment or facilities are no longer adequate to meet the agency's need, shall contract with the division for microfilming services or shall obtain division approval for any such contract with any other vendor. All microfilming produced by state agency microfilming systems shall comply with standards established by the division in accordance with R.S. 44:405(A) (3). This provision shall not be applicable to any state agency where it can be demonstrated to be more economically feasible to continue the microfilming within the agency.

§ 44:416. Retention of Records for Longer Periods than Scheduled

The director of the archives and records service state archivist may upon determining a need therefor authorize the retention of records in possession of the division or the custody of an agency for a longer period than that specified in any approved disposal schedule, or by law.

§ 44:417. Deposit of Records of Historical Value; Transfer of Deposited Records to Public or Educational Institutions

A. The records and associated historical materials of any governor of the state of Louisiana, or any other official of the state, shall be transferred to the custody of the state archivist and deposited with the state archives program within the division when the governor, or other official of the state, leaves office. This Section shall not affect the confidentiality of such records as established by law, nor require the transfer of any document certified by the governor, governor elect. or other official of the state, to be essential for the continued efficient operation of the relevant governmental office: nor shall the provisions of this Section be construed to apply to demonstrably personal and private papers.

B. The state archivist is authorized:

(1) To accept for deposit in the state archives those records of any state or local agency or of the legislature that are determined by the director to have sufficient historical or other value to warrant their continued preservation by the state government of Louisiana.

(2) To direct and effect the transfer to the state archives of any records that have been in existence for more than fifty years and that are determined by the state archivist to have sufficient historical or other value to warrant their continued preservation by the state, unless the head of the state or local agency having custody of the records shall certify. in writing to the state archivist that those

records must be retained in agency custody because they are essential in the conducting of the regular current business of the said agency.

C. The state archivist is also authorized:

(1) To direct and effect, in accordance with law, with the policies of the division, and with any restrictions or stipulations agreed upon between the division and the head of the originating agency, or its successor, if any, the transfer of records deposited or approved for deposit in the state archives or the records center to public or educational institutions for special research or exhibit purposes. It is prescribed and provided that title to such records shall remain vested in the state of Louisiana unless otherwise authorized by law or, in the absence of legal provision, through policies established by the division. It is further provided that such records may be recalled after reasonable notice in writing.

(2) To direct and effect the transfer to the division from private sources of materials which the state archivist is authorized to receive, and to hold in the custody of the division under the provisions of R.S. 44:406 and R.S. 44:420,

§ 44:418. Responsibility for Custody, Use, and Withdrawal of Records

The state archivist shall be responsible for the custody, use, and withdrawal of records transferred to the division and shall, whenever the usage of any records is subject to statutory limitations and restrictions, then properly enforce such limitations and restrictions. Such limitations and restrictions shall not remain in force or effect after the records have been in existence for fifty years. Other limiting agreements, nonstatutory in nature, established between the division and the donor or donors, shall likewise remain in force for no more than fifty years.

§ 44:419. Preservation, Repair, Exhibition of Records; Finding Aids

A. The state archivist shall make provisions for the preservation, management, repair, and rehabilitation, duplication and reproduction, description, and exhibition of records or related documentary material transferred to him as may be needful or appropriate, including the preparation and duplication of inventories, indexes, catalogs, and other finding aids or guides facilitating their use.

B. The state archivist shall make provisions for the display or exhibition of photographic copies or microphotographic copies of records in his or the agency's custody, in lieu of the original records, if he deems it necessary, to protect old, fragile, or damaged records from further damage or loss.

§ 44:420. Deposit of Papers and Other Historical Materials of Officials and Individuals

The state archivist is authorized to accept for deposit: the records, papers and other historical materials of former governors of the state of Louisiana, or of any other official or former official of the state and its subdivisions, and other papers relating to and contemporary with any governor or former governor of Louisiana, subject to restrictions mutually acceptable to the division and the donor; and documentary materials, including motion picture films, still pictures, sound recordings, maps, and papers from private sources that are appropriate for preservation by the

state government as evidence of its organization, functions, policies, and transactions, or those of its subdivisions.

§ 44:421. Authorization to Certify Facts; Evidentiary Status of any Reproductions

A. Any official who is authorized to certify to facts on the basis of records in his custody is authorized to certify to facts on the basis of records that have been transferred by him or his predecessors to the division; however, any fee due any official of the state or its subdivisions shall not be eliminated by this Chapter.

B. Whenever any officer of the state of Louisiana, any political subdivision municipal corporation, or public corporation is required or authorized by law to record, copy, file, recopy, or replace any document, plat, paper, voucher, receipt, or book on file, or record in his office, he may do so by photostatic, microphotographic, microfilm, or other mechanical process which produces a clear, accurate, and permanent copy, reproduction, or facsimile of the original in accordance with standards not less than those established by the division for permanent records under the authority conveyed by R.S. 44:405(A) (3). Any document, when so reproduced and properly identified and certified, shall have full evidentiary value and force in law.

§ 44:422. Safeguards Against Removal or Loss of Records

The head of each agency of the state or its subdivisions shall establish such safeguards against removal or loss of records as he shall deem necessary and as may be required by rules and regulations issued under authority of this Chapter. Such safeguards shall include making it known to all officials and employees of the agency that no records are to be alienated or destroyed except in accordance with law and the policies, rules, and regulations developed therefrom by the state archivist and the division, and calling their attention to the penalties provided by law for the unlawful removal or destruction of records.

§ 44:423. Notification of Actual or Threatened Unlawful Removal or Destruction

The head of each agency of the state or any of its subdivisions shall notify the secretary through the state archivist of any actual, impending, or threatened unlawful removal, defacing, alteration, or destruction of records in the custody of the agency that shall come to his attention and shall assist the secretary in initiating action through the attorney general for recovery.

§ 44:424. Authority of State Financial Officers and Others Not Limited

Nothing in this Chapter shall be construed as limiting the authority of the commissioner of administration, or other officers charged with prescribing accounting systems, forms, or procedures or of lessening the responsibility of collection and disbursal officers for rendering of their accounts for settlement.

§ 44:425. Department of Revenue and Taxation; Exemption

The Department of Revenue and Taxation and all of its records and files shall be exempt from the operation of this Chapter, except those records and files which the secretary of the department, in his discretion, deems to be nonconfidential and nonprivileged under the provisions of R.S.

47:1508 and 1508.1. Those records declared by the secretary. of the department to be nonconfidential and nonprivileged shall be transferred to the state archivist for retention within the division or other disposition.

§ 44:426. Transfer of Inactive Legislative Records to Archives

A. The secretary of the Senate and the clerk of the House of Representatives shall, unless otherwise directed by the Senate or House of Representatives, obtain at the close of each session of the legislature all of the inactive records of the legislature and of each committee thereof and transfer them to the custody of the division for preservation or other appropriate disposition.

B. Upon request, the state archivist shall assist and advise in the establishment of records management programs in the legislative and judicial branches of state government and may, if those branches desire, provide program services similar to those available to the executive branch of state government.

§ 44:427. Suit Records; Inquiries or Request for Service

A. Five years after rendition of a final judgment from which no appeal may be taken, in any suit, except suits affecting records relating to immovable property, adoption, interdiction, successions, trusts, or emancipation, the clerk of court including the clerk of the Criminal or Civil District Court in the parish of Orleans, shall transfer at the direction of the state archivist all permanent records in the suit to the Department of State, as custodian of the official archives of the state, for safe and secure storage, service, restoration, and preservation. The state archivist shall direct the transfer of records from the various parishes in accordance with the schedule established by him pursuant to R.S. 44:40(F). The department shall make reproductions of the original records by the microphotographic process, retain a master negative thereof, and transmit to the sending clerk a copy of the reproductions of the records. The department shall maintain the confidentiality of any records, or parts thereof, which are so classified by law. Thereafter, notwithstanding the provisions of R.S. 44:421, the department shall not make or authenticate copies or reproductions of those records but, upon receipt of any requests for service or of any inquiry. relating to those records, the department shall forward the request or inquiry, to the appropriate clerk of court who may render the necessary, services and charge the appropriate fees, as provided in R.S. 13:841 or 844, or in Orleans Parish by R.S. 13:1213 or 1381.

B. The provisions of this Section shall not apply to any records, the destruction of which is authorized by R.S. 44:40(E) or by R.S. 13:917.

State Archivist and Records Manager:

Donald J. Lemieux, State Archivist

Div. of Archives & Records Mgmt.

Louisiana State Archives

P.O. Box 94125, Baton Rouge LA 70804-9125

504-922-1206 fax: 504-925-4726

