

SUBPOENAS

What is a subpoena?

A subpoena is a form of compulsory legal process that requires a person to produce documents or to personally appear to give testimony, either at a deposition or in court. A subpoena may be issued by an attorney, a court, or a governmental agency.

What are the consequences if a physician does not comply with a properly issued subpoena?

If a physician fails to comply with a properly issued subpoena, the physician may be held in contempt and punished by a fine, imprisonment until he or she complies, and/or other sanctions. See DISCLOSURE OF HEALTH CARE INFORMATION for when a physician must and must not comply with a subpoena issued by an attorney for release of a patient's health care information.

Are there special rules which apply to release of mental health records under a subpoena?

Yes. Mental health records can only be released under certain circumstances.¹ Mental health records must be released pursuant to a lawful order (subpoena) of a court.² Mental health records should not be released pursuant to a subpoena issued by an attorney except to the patient's attorney at any time in order to prepare for involuntary commitment or recommitment proceedings, reexamination appeals, or actions related to detention, admission, commitment, or patient's rights.³

What should a physician do upon receipt of a subpoena?

Upon receiving a subpoena, a physician should read the subpoena carefully to determine what information is being requested, when, and by whom. If the physician has any doubt about the appropriate response to the subpoena, the physician should contact an attorney immediately. If the physician has any reason to believe that his or her care and treatment may be called into question, the physician should not speak to the patient's attorney, and should contact his or her attorney or malpractice carrier for advice.

If the subpoena is from a government agency, the physician should contact an attorney and his or her malpractice carrier immediately.

If the subpoena is from an attorney and seeks either a copy of a patient's medical record or the physician's testimony concerning a patient's health care information, the physician should:

¹ RCW 71.05.630.

² RCW 71.05.630(2)(d).

³ RCW 71.05.630(2)(k). Note: RCW 71.05.630 was amended three separate times in 2009, with three separate versions of the statute. The statement above is supported by (2)(k) in the first version, (2)(j) in the second version, and (2)(m) in the third version.

- Verify whether the required 14-day advance notice or a valid patient authorization was received.⁴ **See DISCLOSURE OF HEALTH CARE INFORMATION.**
- Verify whether a protective order has been entered.⁵
- If no 14-day advance notice or valid patient authorization was received, the physician should not release the requested health care information and should notify the attorney issuing the subpoena that the physician cannot comply with the subpoena.⁶
- If the 14-day advance notice or a valid patient authorization was received, and no protective order has been received, the physician should comply with the subpoena according to its terms.
 - If the subpoena is for the physician's testimony at a deposition or trial and the date and time on the subpoena are not convenient, the physician should contact the attorney who issued the subpoena to arrange a more convenient date and time and to attempt to reach an agreement regarding the reasonable compensation to be paid for the physician's time. **See PHYSICIAN AS WITNESS**
 - If an agreement is reached regarding compensation, the physician should confirm it in writing.
 - If no agreement can be reached as to date and time or compensation, and the physician cannot appear at the date or time stated in the subpoena, the physician should consult an attorney.
- If a protective order has been entered, the physician should comply with the terms of the protective order.
- Place the subpoena, and a notation about the physician's response to the subpoena, in the patient's medical record.
- If there is any question, contact an attorney.

What must a physician do in order to comply with a valid subpoena for documents?

A physician must produce the documents as they are kept in the usual course of business, or may organize and label them to correspond with categories in the subpoena.⁷

⁴ RCW 70.02.060(1), CR 45(c)(2)(B).

⁵ RCW 70.02.060(2).

⁶ CR 45(c)(2)(B).

⁷ CR 45(d)(1).

May a physician charge for time spent in testifying or for producing copies of a patient's medical records in response to a subpoena?

Yes. See **PHYSICIAN AS WITNESS;** and **DISCLOSURE OF MEDICAL RECORDS** for issues related to charges.