

Subpoenas for Depositions and Records

A subpoena is a court order summoning a person or practice to provide copies of a record, or to appear at a designated time and location to provide sworn testimony. Physicians cannot and should not ignore subpoenas. A physician who ignores a subpoena can face serious repercussions.

Subpoenas are commonly received for copies of patient medical records. Most organizations have well-developed policies and a department dedicated to evaluate and respond to such document subpoenas. Even in a solo practice, it is important to have a process to ensure only properly subpoenaed records are released for the appropriate patient and limited to the scope of the request.

While all health information is confidential and requires written authorization to be produced, some forms of patient records may have an additional layer of legal protection requiring a more specific authorization before they are released. These include mental and behavioral health records and HIV/AIDS-related information. Be certain the appropriate documentation, whether a patient authorization or court order, is provided before releasing medical records.

Physicians also commonly receive subpoenas to appear for deposition or court testimony. Your practice may have an established protocol for responding to these types of subpoenas as well, including advising your in-house counsel. For others, it may be wise to inquire with your malpractice insurer who may provide counsel to assist you at no charge. Consulting an attorney before responding to a subpoena for testimony is a wise practice. Your legal counsel should be able to evaluate the applicable statute of limitations and/or repose issues and provide you advice about you/your practice's potential exposure to suit. Although a subpoena for testimony may appear routine, utilizing the resources available to you to thoroughly understand the repercussions of your response is generally the best course of action.

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