

Responding to Subpoenas and Investigations



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Professionals in the medical field handle a myriad of challenges on a daily basis. In addition to providing a high level of care to patients, medical professionals must also handle a wide variety of administrative tasks. In some facilities, tasks are handled by support staff who have been specially trained to deal with sensitive medical information. In smaller offices, doctors often work alone or with a small team of nurses to compile and secure medical information.

Medical professionals may be unsure of how to react when a government official or police officer comes to a medical facility to request records. Officers and agents may bring subpoenas for records and information or may be conducting investigations of a medical facility. Understanding how to handle and respond to subpoenas and investigations is absolutely crucial. Medical professionals and support staff should carefully review the following information. Knowing how to respond to subpoenas and investigations is a critical skill that every medical professional should possess.

The Basics of Subpoenas and Investigations

Government and police agencies must follow certain guidelines when conducting investigations and issuing subpoenas. If an officer doesn't follow set guidelines for legal procedures, he or she may jeopardize an investigation. As a medical professional,

you can help to support law enforcement officials by understanding their duties and understanding how to respond to their requests.

While most law enforcement officers are familiar with guidelines governing their conduct during investigations, they may not be familiar with guidelines governing the conduct of medical professionals. It is important to keep this in mind when facing requests from a police officer or government agent. As a medical professional, you may have to explain certain provisions of the Healthcare Insurance Portability and Accountability Act (HIPAA).

Understanding Subpoenas

Subpoenas are special documents used to gather information or to inform an individual that his or her presence is required in a court of law. A law enforcement officer should explain the purpose of his or her visit to you as soon as they enter your medical facility. Be sure to carefully examine any paperwork that the officer shows you. You should also request a copy of a subpoena or any other orders, such as a search warrant. In some situations, an individual who delivers a subpoena may not be a police officer. Lawyers and other people designated as *officers of the court* can deliver subpoenas.

Subpoenas for Medical Records

There are two different types of subpoenas that are used in the United States. A subpoena for documents is called a subpoena *duces tecum*. This type of subpoena orders an individual or agency to collate and deliver records to a court or to a law enforcement officer. In some cases, a medical professional may be required to accompany these records to the court and offer his or her testimony.

If you have received a subpoena *duces tecum*, it is essential that you review it and fulfill the request for information as soon as you can. If you believe that the request conflicts with HIPAA regulations, call an attorney who specializes in this area of the law. If you are asked to testify in a court about medical records and are unwilling to do so because of patient-doctor privilege concerns, you may also wish to contact an attorney to help you.

Subpoenas in Criminal Cases

In some situations, a medical professional may be subpoenaed to appear in court or at a deposition. This type of subpoena may be delivered by an officer of the court or may be sent by mail to your office or place of residence. If you receive a subpoena but believe that you will be unable to appear in court on a certain date, you should contact the court agent listed on your subpoena as soon as you possibly can.

If you work for a medical facility, you should notify your supervisor that you have been subpoenaed. According to law, your boss *must not* prevent you from attending court. If you have been asked to testify about a sensitive medical issue, you may wish to speak with your facility's attorney first to ensure that you do not break any provisions of HIPAA.

It is important that you always respond quickly to a subpoena. Whether it requests medical records or your presence in court, a subpoena is a legal document. Failure to follow its terms can result in fines and legal charges against you. Be sure to discuss a subpoena with your facility's lawyer if you are unsure of how to fulfill it without breaking HIPAA regulations or patient-doctor privilege.

Understanding Investigations

Individuals who forge long-term careers in the medical field are likely to encounter or take part in an investigation during some point in their career. Investigations can be frightening, especially for doctors and other medical professionals who operate their own offices. If you or your office becomes the target of an investigation, you should contact an attorney as soon as possible. Many doctors and medical facilities choose to keep an attorney on retainer in the case that they come under investigation.

Responding appropriately to law enforcement officers and government agents during an investigation is crucial. Being cooperative without endangering yourself or breaking professional regulations is a must. In general, there are three different types of investigations you may face as a medical professional. Understanding these investigations and being prepared to respond to them is a good way to safeguard your medical career.

Facility-Wide Investigations

Some medical facilities, especially those that rely on state and federal funding, may be investigated on a regular basis to ensure compliance with applicable regulations. Such investigations can be trying, especially for medical staff who cannot control the overall operation of a facility. Doctors, nurses and support staff should remember to be professional with investigators and to follow facility protocol regarding an investigation.

Being prepared for a facility-wide investigation is the best way to ensure that it will go well. Every medical facility should have a plan for handling such an investigation in place *prior* to the arrival of state or federal officials. Remember that maintaining excellent records is essential. You may be able to prove compliance to investigators in part through your records. It is also important to prepare an investigation checklist. Be sure that every employee understands and can follow the

checklist. Keep a copy in a centrally located binder so that employees can review it in case of an unexpected investigation or inspection.

Facility-Wide Investigation Checklist

- Choose one person in your facility to oversee investigations, subpoenas, inspections and search warrants.
- Ask the investigator for identification and make note of the ID or badge number on his or her credentials.
- Make a copy of any paperwork or orders presented to you by the investigator.
- Be cooperative but never consent to a search without a search warrant.
- If you can, make note of any files or items seized during a search or investigation.
- Be sure that all your statements to law enforcement officers are neutral.
- Ask to have your attorney present during a search or interview.

Do *not* hide, alter or destroy documents requested by a law enforcement official.

Medical Board or Licensing Board Investigations

On occasion, a medical professional may have to face an inquiry by a state medical board or licensing board. Such inquiries can be nerve-wracking. If you become subject to an investigation by a medical board or licensing board, you should contact an experienced attorney immediately. If you work for a large medical facility, contact your employee representative as soon as you possibly can.

Requests from medical and licensing boards are often legally complex and confusing. If you attempt to answer such a request without the assistance of an attorney, you may inadvertently provide information that is detrimental to your case. Even if you are certain that you are innocent of wrongdoing, do not attempt to handle an inquiry by a medical or licensing board by yourself.

Criminal Investigations

If you work in an emergency room or trauma center, you may be required to interact with the police on a regular basis. It is imperative that you are cooperative and provide police with any information that you can. If you work for a large medical facility, be sure that you know your facility's policy regarding interaction with law enforcement agencies.

Be sure to inform police officers when you are barred from providing information due to HIPAA regulations. If you are unsure of whether or not you can fulfill a law enforcement officer's request, contact an attorney. Providing information to police officers without going through the proper steps may result in evidence being inadmissible in trial, which can jeopardize a criminal case.

Responding Successfully to Investigations and Subpoenas

Remember that you will enjoy greater success when responding to investigations and subpoenas if you remain calm. Be sure to fulfill all law enforcement requests to the best of your ability. Never be afraid to ask for the assistance of a qualified attorney. Asking for an attorney to assist you is not in any way an indication of guilt or wrongdoing.

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