

SAN MATEO COUNTY  
MENTAL HEALTH SERVICES DIVISION

DATE: October 11, 1996

MENTAL HEALTH POLICY NO.: 96-14

SUBJECT: Subpoenas to Release Records

AUTHORITY: Welfare & Institution Code Section 5328

SUPERSEDES: Prior Policy (Subpoenas) of February 2, 1989

AMENDED: May 1, 2006

ATTACHMENTS:

- A. Subpoena Review Checklist
- B. Sample Cover Letter for Forwarding Records per Appropriate Subpoena and Release
- C. Sample Letter When No Release Accompanies Subpoena and All Documents Are Being Returned
- D. Sample Letter for Returning Subpoena Previously Responded To

POLICY

The courts and the California Attorney General have interpreted that release of records can only be made to the court issuing the order or making the request. (The Attorney General has ruled that the Workers' Compensation Appeals Board is a court for purposes of Welfare and Institutions (W&I) Code Section 5328.) Therefore, there is not authority to release records or information to any person or agency other than the court itself, without the written consent of the patient.

The following steps are general guidelines to follow upon receipt of a subpoena. Instructions are directed toward Administrative Assistants who are responsible for administrative processing of subpoenas.

- A. Review attached check-list for every subpoena received.
- B. Subpoena with signed release of information.
  - 1. If possible, verify signature on release with other signed documents that may be filed in the chart.

2. Have therapist review the chart.
    - a. Therapist should identify any specific mention of person(s) other than the client.
    - b. If therapist approves release of the record, go to step 3.
    - c. If therapist does not approve release of the record, the therapist must contact Mental Health Administration through the Quality Improvement Manager. If necessary, County Counsel will be contacted by Mental Health Administration for additional guidance.
  3. Copy all contents of the chart, both sides; however, include only the most current MIS and financial reports.
    - a. Black out any specific reference to person(s) other than the client, as indicated by the therapist. Re-copy those pages.
    - b. Make sure each page includes “Confidential Patient Information . . . W&I Code 5328” statement.
  4. Complete “Custodian of Records Certification” if there is one. Change whatever is incorrect (e.g., an LCSW shown as an M.D.) on the Certification and indicate that you are an employee of San Mateo County Mental Health Services Division, rather than a specific clinic.
  5. Send registered mail in double envelope (inner envelope is unaddressed) with a cover letter (see Attachment B for sample).
  6. Make entry on Progress Notes, “Records Released to \_\_\_\_\_ per subpoena dated \_\_\_\_\_ and approval of therapist.” Sign and date the entry. Have therapist co-sign entry.
  7. Process check from copy service.
    - a. If payable to San Mateo County Mental Health Services, label as Miscellaneous Revenue, your Region, and send to Mental Health Accounting at MLH 322.
    - b. If payable to a specific therapist, have the therapist endorse and make payable to San Mateo County Mental Health Services; label as Miscellaneous Revenue, your Region, and send to Mental Health Accounting (as above).
- C. Subpoena without signed release of information.

1. Send letter (see Attachment C for sample) and copy of our release form.
2. Return all documents, including check.
3. Wait . . . if records are really desired/needed, the requesting party will resubmit the subpoena with required release.

D. Subpoena File

1. Maintain a file of your correspondence (cover letters only) to avoid responding to duplicate requests. Copy services fairly regularly send duplicate subpoenas to different regions and/or therapists. If you receive a subpoena for a case with services at multiple Mental Health Services sites, check to see that another unit has not responded. If they have, and subsequent request is for the same person, send cover letter (see Attachment D for example) and return all documents. If records have been released previously but to a different person, proceed with either Step A or Step B above. Remember, a copy service may request records as agent for various individuals and/or agencies (e.g., opposing lawyers in a workers' compensation case) so verify the individual/agency represented by the copy service, rather than the copy service itself.
2. If it's unclear as to whether a lawyer is representing the client whose records are being requested, or someone else, first check with the therapist; then, if necessary, call the copy service to verify. If an opposing lawyer is requesting records, the therapist should verify with the client that he/she is aware of the request and has no objections. This should be done even if the client has signed a release of information form.

E. Questions, Assistance, 'Out of Ordinary' Requests for Records or Subpoenas to Appear.

1. Contact Quality Improvement Manager at 650-573-2491.
2. If QI Manager is unavailable, contact the Deputy Director for Operations for assistance at 650-573-2531.

Approved: \_\_\_\_\_

Gale Bataille, Director  
Mental Health Services Division

Reviewed: \_\_\_\_\_  
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