

## Subpoenas

There are 2 types of subpoenas:

1. *Subpoena duces tecum* asks you to produce documents as listed.
2. *Witness subpoena* asks you to appear and give live testimony.

The subpoena may not actually state which of these two types you are receiving, but it will give you enough information to figure it out.

Subpoenas may be issued by judicial officials (judges, magistrates, clerks of court), attorneys, and parties to an action.

They are usually served by sheriff's deputies, but can be served by anyone over the age of 18 who is not party to the action. You can be served by hand delivery, but they also can come by registered or certified mail. Faxed subpoenas are not legal. If the subpoena only requires you to appear and testify and not produce documents, you can be served by law enforcement personnel over the phone.

**If you ignore a subpoena you can be held in contempt of court.**

You can generally ignore a subpoena that is from another state asking you to testify or produce documents, if it is issued by a state court. Federal courts from another state still require you to appear for a criminal case; civil cases have different rules.

**Within North Carolina you can be required to travel to any part of the state to satisfy a subpoena.**

In some circumstances you may be able to be excused from a subpoena, such as if you can produce the documents in advance of the proceeding. This can only be done if the records are not confidential, or the client has given a release for the information.

In producing documents, you have to offer the originals unless the subpoena says copies are acceptable (they usually are).

If the requested documents are **confidential, you may not release any such information on the authority of the subpoena alone**. One of the exceptions to state and federal confidentiality laws must exist before you may disclose any confidential information. The first **exception** is

- ❖ **patient consent**, given in advance, in writing
- ❖ if you **do not have patient consent**, you have to **wait until the court orders you** to disclose the information. It is your responsibility to inform the court that documents you have been requested to produce contain information protected by state and possibly federal confidentiality laws. It is then up to the court to decide whether disclosure is warranted.

If the subpoena requires you to produce **confidential documents** at a **deposition**, you do not have the option of asking a judge to rule on the disclosure. You should contact the party who issued the subpoena. Inform them that **the information sought is protected by confidentiality laws** and you will be unable to produce those documents at the deposition. **You must not reveal that the documents contain information regarding mental health or substance abuse services. You must simply state the information is protected by confidentiality laws.** The requesting party may then be willing to withdraw the subpoena and obtain a court order requesting the documents. If the party is not willing to withdraw the subpoena, you must formally contest the subpoena prior to the deposition. To do so may require an attorney's assistance.

If you receive a subpoena to attend a deposition, and you don't know why, call the requesting party and try to figure it out. If you still have no information to offer, request the party to excuse you. Should they fail to do so, consult an attorney who can submit written reasons on your behalf.

Another situation where you may want to contest a subpoena is when you can't be present at the proceeding. This usually involves when you have a previously scheduled obligation that you can't cancel, and you physically can't appear at the date and time specified. Call the requesting party and attempt to make alternative arrangements. If alternative arrangements can't be agreed upon, consult an attorney.

When asked to testify, you can call the requesting party and asked to be placed on telephone standby. This way you can be offered a more exact time as to when you are needed to appear. You still can not testify about confidential information based on the subpoena alone. You may only do so after the court has ordered you to do so, unless you have consent from the patient.

If you receive a subpoena and you do not have time to compile all the documents requested you should call the requesting party, and attempt to work out alternative arrangements. If such alternative arrangements are not possible, you should attend the proceeding and explain why you could not produce the requested documents. You may also be able to quash the subpoena if it is so burdensome that compliance is almost impossible. This would occur if the subpoena requires you to produce documents that you do not have within your possession, custody or control.

Two other important issues concerning mental health providers and subpoenas:

1. **Federal laws on confidentiality dealing with substance abuse records.** If you have information that identifies a client as a substance abuser or references substance abuse treatment, you must comply with the federal and state confidentiality laws. **You must make sure an exception** in the federal statutes, such as **patient consent**, is present before disclosing that information.
2. **Mental health facilities in NC** must document any disclosure of information in the client's record. If you receive a subpoena, make sure you **record the disclosure in the patient's record.**

If you are requested for a deposition, you can only be made to appear in the county where you live, work and do business.