
By: **Senator Hollinger**

Introduced and read first time: February 4, 2005

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Medical Records - Authorized Disclosures - Compulsory Process**

3 FOR the purpose of altering certain requirements for certain disclosures of certain
 4 medical records; requiring certain health care providers to disclose certain
 5 medical records under certain circumstances if the health care provider receives
 6 certain assurances from certain counsel, certain proof of a certain waiver, or
 7 certain copies of certain orders entered by a court and certain copies of certain
 8 subpoenas, summonses, warrants, or court orders, a certain section of a certain
 9 article of the Annotated Code, and certain notices to certain individuals in a
 10 certain form within a certain time; repealing a certain requirement for a certain
 11 disclosure of certain medical records; and generally relating to the compulsory
 12 process and authorized disclosures of medical records.

13 BY repealing and reenacting, with amendments,
 14 Article - Health - General
 15 Section 4-306(b)(6) and 4-307(k)(1)(v) through (vii)
 16 Annotated Code of Maryland
 17 (2000 Replacement Volume and 2004 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article - Health - General**

21 4-306.

22 (b) A health care provider shall disclose a medical record without the
 23 authorization of a person in interest:

24 (6) [(i)] Subject to the additional limitations for a medical record
 25 developed primarily in connection with the provision of mental health services in §
 26 4-307 of this subtitle and except as otherwise provided in items (2), (7), and (8) of this
 27 subsection, in accordance with compulsory process, if the [subpoena, summons,
 28 warrant, or court order contains a certification that] HEALTH CARE PROVIDER
 29 RECEIVES:

1 [1. A copy of the subpoena, summons, warrant, or court order
2 has been served on the person whose records are sought by the party seeking the
3 disclosure or production of the records; or

4 2. Service of the subpoena, summons, warrant, or court order
5 has been waived by the court for good cause;

6 (ii) In accordance with a stipulation by a patient or person in
7 interest; or

8 (iii) In accordance with a discovery request permitted by law to be
9 made to a court, an administrative tribunal, or a party to a civil court, administrative,
10 or health claims arbitration proceeding;]

11 (I) 1. AN ASSURANCE FROM THE ATTORNEY REPRESENTING
12 THE PARTY SEEKING THE MEDICAL RECORDS THAT:

13 A. A PERSON IN INTEREST HAS NOT OBJECTED TO THE
14 DISCLOSURE OF THE MEDICAL RECORDS AND 30 DAYS HAVE ELAPSED SINCE THE
15 NOTICE WAS SENT; OR

16 B. THE OBJECTIONS OF A PERSON IN INTEREST HAVE BEEN
17 RESOLVED AND THE REQUEST FOR DISCLOSURE IS IN ACCORDANCE WITH THE
18 RESOLUTION;

19 2. PROOF THAT SERVICE OF THE SUBPOENA, SUMMONS,
20 WARRANT, OR COURT ORDER HAS BEEN WAIVED BY THE COURT FOR GOOD CAUSE;
21 OR

22 3. A COPY OF AN ORDER ENTERED BY A COURT ALLOWING
23 DISCLOSURE OF THE MEDICAL RECORDS; AND

24 (II) COPIES OF THE FOLLOWING ITEMS THAT WERE MAILED TO THE
25 PERSON IN INTEREST BY THE PERSON REQUESTING THE DISCLOSURE AT LEAST 30
26 DAYS BEFORE THE RECORDS ARE TO BE DISCLOSED:

27 1. THE SUBPOENA, SUMMONS, WARRANT, OR COURT ORDER
28 SEEKING THE DISCLOSURE OR PRODUCTION OF THE RECORDS;

29 2. THIS SECTION; AND

30 3. A NOTICE IN THE FOLLOWING FORM OR A
31 SUBSTANTIALLY SIMILAR FORM:

32 _____
33 PLAINTIFFS

IN THE

1 V.

FOR

2

3 _____

4 DEFENDANTS

5

CASE NO.: _____

6

NOTICE TO (PATIENT NAME)

7

IN COMPLIANCE WITH § 4-306 OF THE HEALTH - GENERAL ARTICLE,

8

ANNOTATED CODE OF MARYLAND

9 TAKE NOTE THAT MEDICAL RECORDS REGARDING (PATIENT NAME), HAVE BEEN

10 SUBPOENAED FROM THE (NAME AND ADDRESS OF HEALTH CARE PROVIDER)

11 PURSUANT TO THE ATTACHED SUBPOENA AND § 4-306 OF THE HEALTH - GENERAL

12 ARTICLE, ANNOTATED CODE OF MARYLAND. THIS SUBPOENA ___ DOES ___ DOES

13 NOT (MARK ONE) SEEK PRODUCTION OF MENTAL HEALTH RECORDS.

14 PLEASE EXAMINE THESE PAPERS CAREFULLY. IF YOU HAVE ANY OBJECTION TO

15 THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A MOTION FOR A

16 PROTECTIVE ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED FOR THESE

17 DOCUMENTS UNDER MARYLAND RULES 2-403 AND 2-510 NO LATER THAN THIRTY(30)

18 DAYS FROM THE DATE THIS NOTICE IS MAILED. FOR EXAMPLE, A PROTECTIVE ORDER

19 MAY BE GRANTED IF THE RECORDS ARE NOT RELEVANT TO THE ISSUES IN THIS

20 CASE, THE REQUEST UNDULY INVADES YOUR PRIVACY, OR CAUSES YOU SPECIFIC

21 HARM.

22 ALSO ATTACHED TO THIS FORM IS A COPY OF THE WRIT OF SUMMONS DUCES

23 TECUM ISSUED FOR THESE RECORDS.

24 IF YOU BELIEVE YOU NEED FURTHER LEGAL ADVICE ABOUT THIS MATTER, YOU

25 SHOULD CONSULT YOUR ATTORNEY.

26

27

28

29

30

ATTORNEY
(FIRM NAME
ATTORNEY ADDRESS
ATTORNEY PHONE NUMBER)

31

ATTORNEYS FOR (NAME OF PARTY
REPRESENTED)

32

33 CERTIFICATE OF SERVICE

34 I HEREBY CERTIFY THAT A COPY OF THE FOREGOING NOTICE WAS MAILED,

35 FIRST-CLASS POSTAGE PREPAID, THIS ___ DAY OF _____, 200__ TO

36 _____

37 PATIENT

38 _____

1 EACH COUNSEL IN CASE

2 _____
3 ATTORNEY

4 4-307.

5 (k) (1) A health care provider shall disclose a medical record without the
6 authorization of a person in interest:

7 (v) [In accordance with service of compulsory process or a discovery
8 request, as permitted under § 9-109(d), § 9-109.1(d), or § 9-121(d) of the Courts and
9 Judicial Proceedings Article, or as otherwise provided by law, to a court, an
10 administrative tribunal, or a party to a civil court, administrative, or health claims
11 arbitration proceeding, if:

12 1. The request for issuance of compulsory process or the
13 request for discovery filed with the court or administrative tribunal and served on the
14 health care provider is accompanied by a copy of a certificate directed to the recipient,
15 the person in interest, or counsel for the recipient or the person in interest; and

16 2. The certificate:

17 A. Notifies the recipient or the person in interest that
18 disclosure of the recipient's medical record is sought;

19 B. Notifies the recipient or the person in interest of the
20 provisions of this subsection or any other provision of law on which the requesting
21 party relies in seeking disclosure of the information;

22 C. Notifies the recipient or the person in interest of the
23 procedure for filing a motion to quash or a motion for a protective order;

24 D. Is attached to a copy of the request for issuance of a
25 compulsory process or request for discovery; and

26 E. Is mailed to the recipient, the person in interest, or
27 counsel for the recipient or person in interest by certified mail, return receipt
28 requested, on or before the date of filing the request for issuance of compulsory
29 process or the request for discovery;

30 (vi)] In accordance with a subpoena for medical records on specific
31 recipients:

32 1. To health professional licensing and disciplinary boards
33 for the sole purpose of an investigation regarding licensure, certification, or discipline
34 of a health professional or the improper practice of a health profession; and

35 2. To grand juries, prosecution agencies, and law
36 enforcement agencies under the supervision of prosecution agencies for the sole

1 purposes of investigation and prosecution of a provider for theft and fraud, related
2 offenses, obstruction of justice, perjury, unlawful distribution of controlled
3 substances, and of any criminal assault, neglect, patient abuse or sexual offense
4 committed by the provider against a recipient, provided that the prosecution or law
5 enforcement agency shall:

6 A. Have written procedures which shall be developed in
7 consultation with the Director to maintain the medical records in a secure manner so
8 as to protect the confidentiality of the records; and

9 B. In a criminal proceeding against a provider, to the
10 maximum extent possible, remove and protect recipient identifying information from
11 the medical records used in the proceeding; or

12 [(vii)] (VI) In the event of the death of a recipient, to the office of
13 the medical examiner as authorized under § 5-309 or § 10-714 of this article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2005.