
By: **Senators Hollinger, Frosh, and Grosfeld**

Introduced and read first time: January 18, 2006

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: February 21, 2006

CHAPTER _____

1 AN ACT concerning

2 **Health Care Providers - Disclosures of Mental Health Records - Subpoenas**

3 FOR the purpose of ~~requiring~~ specifying the circumstances under which a health care
 4 provider ~~to~~ must disclose a certain medical record without certain authorization
 5 to certain boards ~~if certain documents are attached to~~ in accordance with a
 6 certain subpoena; and generally relating to the disclosure of medical records to
 7 health professional licensing and disciplinary boards.

8 BY repealing and reenacting, without amendments,
 9 Article - Health - General
 10 Section 4-306(b)(6)
 11 Annotated Code of Maryland
 12 (2005 Replacement Volume and 2005 Supplement)

13 BY repealing and reenacting, with amendments,
 14 Article - Health - General
 15 Section 4-307(k)(1)(v)
 16 Annotated Code of Maryland
 17 (2005 Replacement Volume and 2005 Supplement)

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

Article - Health - General

1 4-306.

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

4 (6) Subject to the additional limitations for a medical record developed
5 primarily in connection with the provision of mental health services in § 4-307 of this
6 subtitle and except as otherwise provided in items (2), (7), and (8) of this subsection,
7 in accordance with compulsory process, if the health care provider receives:

8 (i) 1. A written assurance from the party or the attorney
9 representing the party seeking the medical records that:

10 A. A person in interest has not objected to the disclosure of
11 the designated medical records and 30 days have elapsed since the notice was sent; or

12 B. The objections of a person in interest have been resolved
13 and the request for disclosure is in accordance with the resolution;

14 2. Proof that service of the subpoena, summons, warrant, or
15 court order has been waived by the court for good cause; or

16 3. A copy of an order entered by a court expressly authorizing
17 disclosure of the designated medical records; and

18 (ii) For disclosures made under item (i) of this paragraph, copies of
19 the following items that were mailed by certified mail to the person in interest by the
20 person requesting the disclosure at least 30 days before the records are to be
21 disclosed:

22 1. The subpoena, summons, warrant, or court order seeking
23 the disclosure or production of the records;

24 2. This section; and

25 3. A notice in the following form or a substantially similar
26 form:

27 _____ In the
28 Plaintiffs _____

29 v. _____ For

30 _____
31 _____

1 Defendants

2 Case No.: _____

3 NOTICE TO (Patient Name)
4 IN COMPLIANCE WITH § 4-306 OF THE HEALTH - GENERAL ARTICLE,
5 ANNOTATED CODE OF MARYLAND

6 TAKE NOTE that medical records regarding (Patient Name), have been
7 subpoenaed from the (Name and address of Health Care Provider) pursuant to the
8 attached subpoena and § 4-306 of the Health - General Article, Annotated Code of
9 Maryland. This subpoena ____ does ____ does not (mark one) seek production of
10 mental health records.

11 Please examine these papers carefully. IF YOU HAVE ANY OBJECTION TO
12 THE PRODUCTION OF THESE DOCUMENTS, YOU MUST FILE A MOTION FOR
13 A PROTECTIVE ORDER OR A MOTION TO QUASH THE SUBPOENA ISSUED
14 FOR THESE DOCUMENTS UNDER MARYLAND RULES 2-403 AND 2-510 NO
15 LATER THAN THIRTY (30) DAYS FROM THE DATE THIS NOTICE IS MAILED.
16 For example, a protective order may be granted if the records are not relevant to the
17 issues in this case, the request unduly invades your privacy, or causes you specific
18 harm.

19 Also attached to this form is a copy of the subpoena duces tecum issued for these
20 records.

21 If you believe you need further legal advice about this matter, you should consult
22 your attorney.

23 Attorney _____
24 (Firm Name
25 Attorney address
26 Attorney phone number)

27 Attorneys for (Name of Party
28 Represented)

29 Certificate of Service

30 I hereby certify that a copy of the foregoing notice was mailed, first-class
31 postage prepaid, this ____ day of _____, 200_ to

32 _____
33 Patient

34 _____
35 Each Counsel in Case

36 _____
37 Attorney

1 4-307.

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

4 (v) In accordance with a subpoena for medical records on specific
5 recipients:

6 1. To health professional licensing and disciplinary boards
7 for the sole purpose of an investigation regarding licensure, certification, or discipline
8 of a health professional or the improper practice of a health profession IF:

9 A. THE DOCUMENTS DESCRIBED UNDER § 4-306(B)(6) ARE
10 ATTACHED TO THE SUBPOENA;

11 B. THE INVESTIGATION IS AS A RESULT OF A COMPLAINT BY
12 A PERSON IN INTEREST; OR

13 C. THE INVESTIGATION CONDUCTED BY A BOARD OR A PEER
14 REVIEW COMMITTEE IS A REVIEW OF ALL OR PART OF A HEALTH CARE
15 PROFESSIONAL'S PRACTICE; and

16 2. To grand juries, prosecution agencies, and law
17 enforcement agencies under the supervision of prosecution agencies for the sole
18 purposes of investigation and prosecution of a provider for theft and fraud, related
19 offenses, obstruction of justice, perjury, unlawful distribution of controlled
20 substances, and of any criminal assault, neglect, patient abuse or sexual offense
21 committed by the provider against a recipient, provided that the prosecution or law
22 enforcement agency shall:

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

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

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 2006.

