

# HOUSE BILL 876

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CF SB 443

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By: **Delegate Morhaim**

Introduced and read first time: February 6, 2008

Assigned to: Health and Government Operations

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Board of Physicians – Subpoenas – Medical Records for Mental Health**  
3 **Services**

4 FOR the purpose of requiring certain health care providers, in accordance with a  
5 subpoena, to disclose certain medical records for mental health services to the  
6 State Board of Physicians for certain investigations into complaints made by a  
7 certain person under certain circumstances; authorizing the Board to issue  
8 certain subpoenas for medical records for mental health services for certain  
9 investigations if on a certain date the Board notifies the person in interest by  
10 certified mail that the subpoena has been issued and that the person in interest  
11 may assert certain rights within a certain period of time; authorizing the Board  
12 to require the disclosure of certain medical records if certain rights are not  
13 asserted within a certain period of time; and generally relating to the issuance  
14 of subpoenas for medical records for mental health services by the State Board  
15 of Physicians.

16 BY repealing and reenacting, with amendments,  
17 Article – Health – General  
18 Section 4–307(k)(1)(v)  
19 Annotated Code of Maryland  
20 (2005 Replacement Volume and 2007 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article – Health Occupations  
23 Section 14–401(i)  
24 Annotated Code of Maryland  
25 (2005 Replacement Volume and 2007 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Health – General**

2 4–307.

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

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

7 1. [To] **EXCEPT AS PROVIDED FOR THE STATE**  
8 **BOARD OF PHYSICIANS UNDER § 14–401(I)(2) OF THE HEALTH OCCUPATIONS**  
9 **ARTICLE, TO** health professional licensing and disciplinary boards for the sole  
10 purpose of an investigation regarding licensure, certification, or discipline of a health  
11 professional or the improper practice of a health profession; and

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

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

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

25 **Article – Health Occupations**

26 14–401.

27 (i) (1) [The] **EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
28 **SUBSECTION, THE** Board may issue subpoenas and administer oaths in connection  
29 with any investigation under this section and any hearing or proceeding before it.

30 (2) (I) **IF THE BOARD ISSUES A SUBPOENA FOR A PATIENT’S**  
31 **MEDICAL RECORDS FOR MENTAL HEALTH SERVICES AS THE RESULT OF A**  
32 **COMPLAINT RECEIVED BY THE BOARD FROM A PERSON OTHER THAN A PERSON**  
33 **IN INTEREST, AS DEFINED IN § 4–301 OF THE HEALTH – GENERAL ARTICLE, ON**  
34 **THE SAME DATE THE SUBPOENA IS ISSUED, THE BOARD SHALL:**

1                   **1. NOTIFY THE PERSON IN INTEREST BY CERTIFIED**  
2 **MAIL, RETURN RECEIPT REQUESTED, THAT THE BOARD IS ISSUING THE**  
3 **SUBPOENA FOR THE RECORDS AND THAT THE PERSON IN INTEREST HAS A**  
4 **RIGHT TO:**

5                   **A. ASSERT ANY CONSTITUTIONAL RIGHT OR OTHER**  
6 **LEGAL AUTHORITY IN OPPOSITION TO THE DISCLOSURE OF THE MEDICAL**  
7 **RECORD BY FILING A MOTION TO QUASH OR A MOTION FOR A PROTECTIVE**  
8 **ORDER IN THE CIRCUIT COURT FOR THE JURISDICTION IN WHICH THE PERSON**  
9 **IN INTEREST RESIDES WITHIN 30 DAYS AFTER RECEIVING THE NOTICE; AND**

10                   **B. REQUEST A HEARING ON THE MOTION IN THE**  
11 **CIRCUIT COURT; AND**

12                   **2. NOTIFY THE RECIPIENT OF THE SUBPOENA BY**  
13 **CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT THE PERSON IN**  
14 **INTEREST HAS BEEN SENT THE NOTICE REQUIRED UNDER ITEM 1 OF THIS**  
15 **SUBPARAGRAPH.**

16                   **(II) IF A PERSON IN INTEREST WHO RECEIVES NOTICE**  
17 **UNDER SUBPARAGRAPH (I)1 OF THIS PARAGRAPH DOES NOT ASSERT A RIGHT**  
18 **UNDER THIS PARAGRAPH WITHIN 30 DAYS AFTER RECEIVING THE NOTICE, THE**  
19 **BOARD MAY REQUIRE THE RECIPIENT OF THE SUBPOENA TO DISCLOSE THE**  
20 **PATIENT'S MEDICAL RECORDS FOR MENTAL HEALTH SERVICES.**

21                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2008.