

SENATE BILL 443

J2
SB 258/07 – EHE

8lr1777

By: **Senators Frosh, Conway, and Dyson**
Introduced and read first time: January 31, 2008
Assigned to: Education, Health, and Environmental Affairs

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:

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; and12 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; and22 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; or25 **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.