

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

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 6, 2008

CHAPTER _____

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~~
10 patient by certified mail that the subpoena has been issued and that the ~~person~~
11 ~~in interest~~ patient may assert certain rights within a certain period of time;
12 authorizing the Board to require the disclosure of certain medical records if
13 certain rights are not asserted within a certain period of time; and generally
14 relating to the issuance of subpoenas for medical records for mental health
15 services by the State Board 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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 (2005 Replacement Volume and 2007 Supplement)

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

4 **Article - Health - General**

5 4-307.

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

8 (v) In accordance with a subpoena for medical records on
9 specific recipients:

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

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

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

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

28 **Article - Health Occupations**

29 14-401.

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

33 (2) (I) **IF THE BOARD ISSUES A SUBPOENA FOR A PATIENT'S**
34 **MEDICAL RECORDS FOR MENTAL HEALTH SERVICES AS THE RESULT OF A**

1 COMPLAINT RECEIVED BY THE BOARD FROM A PERSON OTHER THAN ~~A PERSON~~
2 ~~IN INTEREST, AS DEFINED IN § 4-301 OF THE HEALTH GENERAL ARTICLE~~ THE
3 PATIENT, ON THE SAME DATE THE SUBPOENA IS ISSUED, THE BOARD SHALL:

4 1. NOTIFY THE ~~PERSON IN INTEREST~~ PATIENT BY
5 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT THE BOARD IS ISSUING
6 THE SUBPOENA FOR THE RECORDS AND THAT THE ~~PERSON IN INTEREST~~
7 PATIENT HAS A RIGHT TO:

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

14 B. REQUEST A HEARING ON THE MOTION IN THE
15 CIRCUIT COURT; AND

16 2. NOTIFY THE RECIPIENT OF THE SUBPOENA BY
17 CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT THE ~~PERSON IN~~
18 ~~INTEREST~~ PATIENT HAS BEEN SENT THE NOTICE REQUIRED UNDER ITEM 1 OF
19 THIS SUBPARAGRAPH.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.