

SENATE BILL 734

J2
SB 443/08 – EHE

9lr2402

By: **Senators Raskin and Frosh**

Introduced and read first time: February 6, 2009

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

15 BY repealing and reenacting, with amendments,
16 Article – Health – General
17 Section 4–307(k)(1)(v)
18 Annotated Code of Maryland
19 (2005 Replacement Volume and 2008 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Health Occupations
22 Section 14–401(i)
23 Annotated Code of Maryland
24 (2005 Replacement Volume and 2008 Supplement)

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

27 **Article – Health – General**

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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
5 specific recipients:

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

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

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

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

24 **Article - Health Occupations**

25 14-401.

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

29 (2) (I) **IF THE BOARD ISSUES A SUBPOENA FOR A PATIENT'S**
30 **MEDICAL RECORDS FOR MENTAL HEALTH SERVICES AS THE RESULT OF A**
31 **COMPLAINT RECEIVED BY THE BOARD FROM A PERSON OTHER THAN THE**
32 **PATIENT, ON THE SAME DATE THE SUBPOENA IS ISSUED, THE BOARD SHALL:**

33 1. **NOTIFY THE PATIENT BY CERTIFIED MAIL,**
34 **RETURN RECEIPT REQUESTED, THAT THE BOARD IS ISSUING THE SUBPOENA**
35 **FOR THE RECORDS AND THAT THE PATIENT HAS A RIGHT TO:**

1 **A. ASSERT ANY CONSTITUTIONAL RIGHT OR OTHER**
2 **LEGAL AUTHORITY IN OPPOSITION TO THE DISCLOSURE OF THE MEDICAL**
3 **RECORD BY FILING A MOTION TO QUASH OR A MOTION FOR A PROTECTIVE**
4 **ORDER IN THE CIRCUIT COURT FOR THE JURISDICTION IN WHICH THE PATIENT**
5 **RESIDES WITHIN 30 DAYS AFTER RECEIVING THE NOTICE; AND**

6 **B. REQUEST A HEARING ON THE MOTION IN THE**
7 **CIRCUIT COURT; AND**

8 **2. NOTIFY THE RECIPIENT OF THE SUBPOENA BY**
9 **CERTIFIED MAIL, RETURN RECEIPT REQUESTED, THAT THE PATIENT HAS BEEN**
10 **SENT THE NOTICE REQUIRED UNDER ITEM 1 OF THIS SUBPARAGRAPH.**

11 **(II) IF A PATIENT WHO RECEIVES NOTICE UNDER**
12 **SUBPARAGRAPH (I)1 OF THIS PARAGRAPH DOES NOT ASSERT A RIGHT UNDER**
13 **THIS PARAGRAPH WITHIN 30 DAYS AFTER RECEIVING THE NOTICE, THE BOARD**
14 **MAY REQUIRE THE RECIPIENT OF THE SUBPOENA TO DISCLOSE THE PATIENT'S**
15 **MEDICAL RECORDS FOR MENTAL HEALTH SERVICES.**

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2009.