

# SENATE BILL 734

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SB 443/08 – EHE

9lr2402  
CF HB 1232

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By: **Senators Raskin and Frosh**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

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Committee Report: Favorable

Senate action: Adopted

Read second time: March 24, 2009

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## 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 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)

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

3 **Article - Health - General**

4 4-307.

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

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

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

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

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

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

27 **Article - Health Occupations**

28 14-401.

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

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

1 COMPLAINT RECEIVED BY THE BOARD FROM A PERSON OTHER THAN THE  
2 PATIENT, ON THE SAME DATE THE SUBPOENA IS ISSUED, THE BOARD SHALL:

3 1. NOTIFY THE PATIENT BY CERTIFIED MAIL,  
4 RETURN RECEIPT REQUESTED, THAT THE BOARD IS ISSUING THE SUBPOENA  
5 FOR THE RECORDS AND THAT THE PATIENT HAS A RIGHT TO:

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

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

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

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

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

Approved:

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Governor.

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President of the Senate.

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Speaker of the House of Delegates.