

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 8.01-407, 8.01-413, 16.1-89, 16.1-265, and 32.1-127.1:03 of the Code of Virginia, relating to how summons for witness issued.

[H 1213]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-407, 8.01-413, 16.1-89, 16.1-265, and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-407. How summons for witness issued, and to whom directed; prior permission of court to summon certain officials and judges; attendance before commissioner of other state.

A. A summons may be issued, directed as prescribed in § 8.01-292, commanding the officer to summon any person to attend on the day and at the place that such attendance is desired, to give evidence before a court, grand jury, arbitrators, magistrate, notary, or any commissioner or other person appointed by a court or acting under its process or authority in a judicial or quasi-judicial capacity. The summons may be issued, *by the clerk of the court* if the attendance ~~be~~ is desired at a court or in a proceeding pending in a court, ~~by the clerk thereof, and~~. The clerk shall not impose any time restrictions limiting the right to properly request a summons up to and including the date of the proceedings;

If *attendance is desired* before a commissioner in chancery or other commissioner of a court, *the summons may be issued* by the clerk of the court in which the matter is pending, or by such commissioner in chancery or other commissioner;

If *attendance is desired* before a notary or other officer taking a deposition, *the summons may be issued* by such notary or other officer at the instance of the attorney desiring the attendance of the person sought;

If *attendance is sought* before a grand jury, *the summons may be issued* by the attorney for the Commonwealth, or the clerk of the court, at the instance of the attorney for the Commonwealth; ~~and~~.

Except as otherwise provided in this subsection, if attendance is desired in a civil proceeding pending in a court or at a deposition in connection with such proceeding, a summons may be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. An attorney-issued summons shall be on a form approved by the Supreme Court, signed by the attorney and shall include the attorney's address. The summons shall be deemed to be a pleading to which the provisions of § 8.01-271.1 shall apply. A copy of the summons, together with payment of all clerk's fees, if applicable, and, if served by a sheriff, all service of process fees, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing summonses issued by a clerk shall apply *mutatis mutandis*. When an attorney-at-law transmits one or more attorney-issued subpoenas to a sheriff to be served in his jurisdiction, such subpoenas shall be accompanied by a transmittal sheet. The transmittal sheet, which may be in the form of a letter, shall contain for each subpoena: (i) the person to be served, (ii) the name of the city or county in which the subpoena is to be served, in parentheses, (iii) the style of the case in which the subpoena was issued, (iv) the court in which the case is pending, and (v) the amount of fees tendered or paid to each clerk in whose court the case is pending together with a photocopy of the payment instrument or clerk's receipt. If copies of the same transmittal sheet are used to send subpoenas to more than one sheriff for service of process, then subpoenas shall be grouped by the jurisdiction in which they are to be served. Such transmittal sheet shall be signed by the transmitting attorney under penalty of perjury. For each person to be served, an original subpoena and copy thereof shall be included. If the attorney desires a return copy of the transmittal sheet as proof of receipt, he shall also enclose an additional copy of the transmittal sheet together with an envelope addressed to the attorney with sufficient first class postage affixed. Upon receipt of such transmittal, the transmittal sheet shall be date-stamped and, if the extra copy and above-described envelope are provided, the copy shall also be date-stamped and returned to the attorney-at-law in the above-described envelope.

However, when such transmittal does not comply with the provisions of this section, the sheriff may promptly return such transmittal if accompanied by a short description of such noncompliance. An attorney may not issue a summons in any of the following civil proceedings: (i) habeas corpus under Article 3 (§ 8.01-654 *et seq.*) of Chapter 25 of this title, (ii) delinquency or abuse and neglect proceedings under Article 3 (§ 16.1-241 *et seq.*) of Chapter 11 of Title 16.1, (iii) issuance of a protective order pursuant to Article 4 (§ 16.1-246 *et seq.*) or Article 9 (§ 16.1-278 *et seq.*) of Chapter 11 of Title 16.1, or Chapter 9.1 (§ 19.2-152.8 *et seq.*) of Title 19.2, (iv) civil forfeiture proceedings, (v)

ENROLLED

HB1213ER

57 *habitual offender proceedings under Article 9 (§ 46.2-351 et seq.) of Chapter 3 of Title 46.2, (vi)*
 58 *administrative license suspension pursuant to § 46.2-391.2 and (vii) petition for writs of mandamus or*
 59 *prohibition in connection with criminal proceedings. A subpoena issued by an attorney shall not be*
 60 *issued less than five business days prior to the date that attendance is desired.*

61 In other cases, *if attendance is desired, the summons may be issued* by the clerk of the circuit court
 62 of the county or city in which the attendance is desired.

63 ~~It~~ A *summons* shall express on whose behalf, and in what case or about what matter, the witness is
 64 to attend. Failure to respond to any such summons shall be punishable by the court in which the
 65 proceeding is pending as for contempt. *When any subpoena is served less than five calendar days before*
 66 *appearance is required, the court may, after considering all of the circumstances, refuse to enforce the*
 67 *subpoena for lack of adequate notice.*

68 B. No subpoena shall, without permission of the court first obtained, issue for the attendance of the
 69 Governor, Lieutenant Governor, or Attorney General of this Commonwealth, or a judge of any court
 70 thereof; the President or Vice President of the United States; any member of the President's Cabinet; any
 71 ambassador or consul; or any military officer on active duty holding the rank of admiral or general.

72 C. This section shall be deemed to authorize a summons to compel attendance of a citizen of the
 73 Commonwealth before commissioners or other persons appointed by authority of another state when the
 74 summons requires the attendance of such witness at a place not out of his county or city.

75 § 8.01-413. Certain copies of health care provider's records or papers of patient admissible; right of
 76 patient or his attorney to copies of such records or papers; subpoena; damages, costs and attorney's fees.

77 A. In any case where the hospital, nursing facility, physician's, or other health care provider's original
 78 records or papers of any patient in a hospital or institution for the treatment of physical or mental illness
 79 are admissible or would be admissible as evidence, any typewritten copy, photograph, photostatted copy,
 80 or microphotograph or printout or other hard copy generated from computerized or other electronic
 81 storage, microfilm, or other photographic, mechanical, electronic or chemical storage process thereof
 82 shall be admissible as evidence in any court of this Commonwealth in like manner as the original, if the
 83 printout or hard copy or microphotograph or photograph is properly authenticated by the employees
 84 having authority to release or produce the original records.

85 Any hospital, nursing facility, physician, or other health care provider whose records or papers
 86 relating to any such patient are subpoenaed for production ~~under this section or the Rules of the~~
 87 ~~Supreme Court of Virginia as provided by law~~ may comply with the subpoena by a timely mailing to
 88 the clerk issuing the subpoena *or in whose court the action is pending* properly authenticated copies,
 89 photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena *or,*
 90 *in the case of an attorney-issued subpoena, in which the action is pending,* may, after notice to such
 91 hospital, nursing facility, physician, or other health care provider, enter an order requiring production of
 92 the originals, if available, of any stored records or papers whose copies, photographs or
 93 microphotographs are not sufficiently legible. The party requesting the subpoena *duces tecum or on*
 94 *whose behalf and attorney-issued subpoena duces tecum was issued* shall be liable for the reasonable
 95 charges of the hospital, nursing facility, physician, or other health care provider for the service of
 96 maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies
 97 of X-ray photographs, however, such charges shall not exceed fifty cents for each page up to fifty pages
 98 and twenty-five cents a page thereafter for copies from paper and one dollar per page for copies from
 99 microfilm or other micrographic process, plus all postage and shipping costs and a search and handling
 100 fee not to exceed ten dollars.

101 B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers
 102 shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or
 103 attorney's written request, which request shall comply with the requirements of *subsection E of*
 104 *§ 32.1-127.1:03.* However, copies of a patient's records shall not be furnished to such patient where the
 105 patient's treating physician has made a part of the patient's records a written statement that in his
 106 opinion the furnishing to or review by the patient of such records would be injurious to the patient's
 107 health or well-being, but in any such case such records shall be furnished to the patient's attorney within
 108 fifteen days of the date of such request. A reasonable charge may be made for the service of
 109 maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs,
 110 however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a
 111 page thereafter for copies from paper and one dollar per page for copies from microfilm or other
 112 micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed
 113 ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a
 114 request from a patient's attorney shall require a writing signed by the patient confirming the attorney's
 115 authority to make the request.

116 C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to
 117 comply with any written request made in accordance with subsection B within the period of time

specified in that subsection and within the manner specified in *subsections E and F of § 32.1-127.1:03*, the patient or his attorney may ~~by affidavit filed~~ *cause a subpoena duces tecum to be issued. The subpoena may be issued (i) upon filing a request therefor with the clerk of the circuit court wherein any eventual suit, if any, would be required to be filed, upon and payment of the fees required by subdivision A 18 of § 17.1-275, and fees for service, request that the clerk subpoena such records or papers or (ii) by the patient's attorney in a pending civil case in accordance with § 8.01-407 and if issued by such attorney at least five business days prior to the date that production of the record is desired upon payment of the fees required by subdivision A 23 of § 17.1-275 at the time of filing of a copy of the subpoena duces tecum with the clerk. The clerk shall thereupon issue a subpoena, shall be* returnable within twenty days of proper service, directing the hospital, nursing facility, physician, or other health care provider to produce and furnish copies of the reports and papers to ~~him, whereupon,~~ the clerk *who shall then make the same available to the patient or his attorney. If the court finds that a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by imposing a charge in excess of the reasonable expense of making the copies and processing the request for records, the court may award damages for all expenses incurred by the patient to obtain such copies, including court costs and reasonable attorney's fees.*

D. The provisions of subsections A, B, and C hereof shall apply to any health care provider whose office is located within or without the Commonwealth if the records pertain to any patient who is a party to a cause of action in any court in the Commonwealth of Virginia, and shall apply only to requests made by an attorney, or his client, in anticipation of litigation or in the course of litigation.

E. Health care provider, as used in this section, shall have the same meaning as provided in § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to provide the service of retrieving, reviewing, and preparing such copies for distribution.

F. Notwithstanding the authorization to admit as evidence patient records in the form of microphotographs, prescription dispensing records maintained in or on behalf of any pharmacy registered or permitted in Virginia shall only be stored in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412.

§ 16.1-89. Subpoena duces tecum.

A judge or clerk of a district court may issue a subpoena duces tecum pursuant to the terms of Rule 4:9 of the Rules of the Supreme Court of Virginia except that such subpoena may be directed to a party to the case as well as to a person who is not a party.

Subpoena duces tecum for medical records issued by an attorney shall be subject to the provisions of §§ 8.01-413 and 32.1-127.1:03 except that no separate fee for issuance shall be imposed.

A subpoena duces tecum may also be issued by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena duces tecum shall be on a form approved by the committee on district courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas duces tecum issued by a clerk shall apply mutatis mutandis, except that attorneys may not issue subpoenas duces tecum in those cases in which they may not issue a summons as provided in § 8.01-407 and may not issue a subpoena duces tecum less than five business days prior to the date that production of evidence is desired. When an attorney-at-law transmits one or more subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena duces tecum issued by an attorney is less than fourteen days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds upon which such production, inspection or testing should not be had. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to the requested production, inspection or testing, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel production, inspection or testing. Upon such timely motion, the court may quash, modify or sustain the subpoena.

§ 16.1-265. Subpoena.

Upon application of a party and pursuant to the rules of the Supreme Court of Virginia for the issuance of subpoenas, the clerk of the court shall issue, and the court on its own motion may issue, subpoenas requiring attendance and testimony of witnesses and production of records, documents or other tangible objects at any hearing.

Subpoenas duces tecum for medical records shall be subject to the provisions of §§ 8.01-413 and 32.1-277.1:03 except that no separate fee shall be imposed. A subpoena may also be issued in a civil proceeding by an attorney-at-law who is an active member of the Virginia State Bar at the time of issuance, as an officer of the court. Any such subpoena shall be on a form approved by the Committee

on District Courts, signed by the attorney as if a pleading and shall include the attorney's address. A copy, together with the attorney's certificate of service pursuant to Rule 1:12, shall be mailed or delivered to the clerk's office of the court in which the case is pending on the day of issuance by the attorney. The law governing subpoenas issued by a clerk shall apply *mutatis mutandis*, except that attorneys may not issue subpoenas in those cases in which they may not issue a summons as provided in § 8.01-407 and may not issue a subpoena duces tecum less than five business days prior to the date that production of evidence is required. When an attorney-at-law transmits one or more subpoenas or subpoenas duces tecum to a sheriff to be served in his jurisdiction, the provisions in § 8.01-407 regarding such transmittals shall apply.

If the time for compliance with a subpoena issued by an attorney is less than fourteen days after service of the subpoena, the person to whom it is directed may serve upon the party issuing the subpoena a written objection setting forth any grounds therefor. If objection is made, the party on whose behalf the subpoena was issued and served shall not be entitled to compliance, except pursuant to an order of the court, but may, upon notice to the person to whom the subpoena was directed, move for an order to compel compliance. Upon such timely motion, the court may quash, modify or sustain the subpoena.

§ 32.1-127.1:03. Patient health records privacy.

A. There is hereby recognized a patient's right of privacy in the content of a patient's medical record. Patient records are the property of the provider maintaining them, and, except when permitted by this section or by another provision of state or federal law, no provider, or other person working in a health care setting, may disclose the records of a patient.

Patient records shall not be removed from the premises where they are maintained without the approval of the provider, except in accordance with a court order or subpoena consistent with § 8.01-413 C or with this section or in accordance with the regulations relating to change of ownership of patient records promulgated by a health regulatory board established in Title 54.1.

No person to whom disclosure of patient records was made by a patient or a provider shall redisclose or otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made, without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition shall not, however, prevent (i) any provider who receives records from another provider from making subsequent disclosures as permitted under this section or (ii) any provider from furnishing records and aggregate or other data, from which patient-identifying prescription information has been removed, encoded or encrypted, to qualified researchers, including, but not limited to, pharmaceutical manufacturers and their agents or contractors, for purposes of clinical, pharmaco-epidemiological, pharmaco-economic, or other health services research.

B. As used in this section:

"Agent" means a person who has been appointed as a patient's agent under a power of attorney for health care or an advance directive under the Health Care Decisions Act (§ 54.1-2981 et seq.).

"Guardian" means a court-appointed guardian of the person.

"Health services" includes, but is not limited to, examination, diagnosis, evaluation, treatment, pharmaceuticals, aftercare, habilitation or rehabilitation and mental health therapy of any kind.

"Parent" means a biological, adoptive or foster parent.

"Patient" means a person who is receiving or has received health services from a provider.

"Patient-identifying prescription information" means all prescriptions, drug orders or any other prescription information that specifically identifies an individual patient.

"Provider" shall have the same meaning as set forth in the definition of "health care provider" in § 8.01-581.1, except that state-operated facilities shall also be considered providers for the purposes of this section. Provider shall also include all persons who are licensed, certified, registered or permitted by any of the health regulatory boards within the Department of Health Professions, except persons regulated by the Board of Funeral Directors and Embalmers or the Board of Veterinary Medicine.

"Record" means any written, printed or electronically recorded material maintained by a provider in the course of providing health services to a patient concerning the patient and the services provided. "Record" also includes the substance of any communication made by a patient to a provider in confidence during or in connection with the provision of health services to a patient or information otherwise acquired by the provider about a patient in confidence and in connection with the provision of health services to the patient.

C. The provisions of this section shall not apply to any of the following:

1. The status of and release of information governed by §§ 65.2-604 and 65.2-607 of the Virginia Workers' Compensation Act; or

2. Except where specifically provided herein, the records of minor patients.

D. Providers may disclose the records of a patient:

1. As set forth in subsection E of this section, pursuant to the written consent of the patient or in the

case of a minor patient, his custodial parent, guardian or other person authorized to consent to treatment of minors pursuant to § 54.1-2969; also, in emergency cases or situations where it is impractical to obtain the patient's written consent, pursuant to the patient's oral consent for a provider to discuss the patient's records with a third party specified by the patient;

2. In compliance with a subpoena issued in accord with subsection H of this section, pursuant to court order upon good cause shown or in compliance with a subpoena issued pursuant to subsection C of § 8.01-413;

3. In accord with subsection F of § 8.01-399 including, but not limited to, situations where disclosure is reasonably necessary to establish or collect a fee or to defend a provider or the provider's employees or staff against any accusation of wrongful conduct; also as required in the course of an investigation, audit, review or proceedings regarding a provider's conduct by a duly authorized law-enforcement, licensure, accreditation, or professional review entity;

4. In testimony in accordance with §§ 8.01-399 and 8.01-400.2;

5. In compliance with the provisions of § 8.01-413;

6. As required or authorized by any other provision of law including contagious disease, public safety, and suspected child or adult abuse reporting requirements, including, but not limited to, those contained in §§ 32.1-36, 32.1-36.1, 32.1-40, 32.1-41, 32.1-276.5, 32.1-283, 32.1-283.1, 37.1-98.2, 53.1-40.10, 54.1-2403.3, 54.1-2906, 54.1-2907, 54.1-2966, 54.1-2966.1, 54.1-2967, 54.1-2968, 63.1-55.3 and 63.1-248.11;

7. Where necessary in connection with the care of the patient;

8. In the normal course of business in accordance with accepted standards of practice within the health services setting; however, the maintenance, storage, and disclosure of the mass of prescription dispensing records maintained in a pharmacy registered or permitted in Virginia shall only be accomplished in compliance with §§ 54.1-3410, 54.1-3411 and 54.1-3412;

9. When the patient has waived his right to the privacy of the medical records;

10. When examination and evaluation of a patient are undertaken pursuant to judicial or administrative law order, but only to the extent as required by such;

11. To the guardian ad litem in the course of a guardianship proceeding of an adult patient authorized under §§ 37.1-128.1, 37.1-128.2 and 37.1-132;

12. To the attorney appointed by the court to represent a patient in a civil commitment proceeding under § 37.1-67.3;

13. To the attorney and/or guardian ad litem of a minor patient who represents such minor in any judicial or administrative proceeding, provided that the court or administrative hearing officer has entered an order granting the attorney or guardian ad litem this right and such attorney or guardian ad litem presents evidence to the provider of such order;

14. With regard to the Court-Appointed Special Advocate (CASA) program, a minor's records in accord with § 9-173.12;

15. To an agent appointed under a patient's power of attorney or to an agent or decision maker designated in a patient's advance directive for health care or to any other person consistent with the provisions of the Health Care Decisions Act (§ 54.1-2981 et seq.);

16. To third-party payors and their agents for purposes of reimbursement;

17. As is necessary to support an application for receipt of health care benefits from a governmental agency or as required by an authorized governmental agency reviewing such application or reviewing benefits already provided;

18. Upon the sale of a medical practice as provided in § 54.1-2405; or upon a change of ownership or closing of a pharmacy pursuant to regulations of the Board of Pharmacy;

19. In accord with § 54.1-2400.1 B, to communicate a patient's specific and immediate threat to cause serious bodily injury or death of an identified or readily identifiable person;

20. To the patient, except as provided in subsections E and F of this section and subsection B of § 8.01-413;

21. In the case of substance abuse records, when permitted by and in conformity with requirements of federal law found in 42 U.S.C. 290dd-2 and 42 C.F.R. Part 2;

22. In connection with the work of any entity established as set forth in § 8.01-581.16 to evaluate the adequacy or quality of professional services or the competency and qualifications for professional staff privileges;

23. If the records are those of a deceased or mentally incapacitated patient to the personal representative or executor of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or if there is no personal representative, executor, legal guardian or committee appointed, to the following persons in the following order of priority: a spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the deceased patient in order of blood relationship; and

24. For the purpose of conducting record reviews of inpatient hospital deaths to promote identification of all potential organ, eye, and tissue donors in conformance with the requirements of applicable federal law and regulations, including 42 C.F.R. § 482.45, (i) to the provider's designated organ procurement organization certified by the United States Health Care Financing Administration and (ii) to any eye bank or tissue bank in Virginia certified by the Eye Bank Association of America or the American Association of Tissue Banks.

E. Requests for copies of medical records shall (i) be in writing, dated and signed by the requester; (ii) identify the nature of the information requested; and (iii) include evidence of the authority of the requester to receive such copies and identification of the person to whom the information is to be disclosed. Within fifteen days of receipt of a request for copies of medical records, the provider shall do one of the following: (i) furnish such copies to any requester authorized to receive them; (ii) inform the requester if the information does not exist or cannot be found; (iii) if the provider does not maintain a record of the information, so inform the requester and provide the name and address, if known, of the provider who maintains the record; or (iv) deny the request (a) under subsection F, (b) on the grounds that the requester has not established his authority to receive such records or proof of his identity, or (c) as otherwise provided by law. Procedures set forth in this section shall apply only to requests for records not specifically governed by other provisions of this Code, federal law or state or federal regulation.

F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending physician or the patient's clinical psychologist has made a part of the patient's record a written statement that, in his opinion, the furnishing to or review by the patient of such records would be injurious to the patient's health or well-being. If any custodian of medical records denies a request for copies of records based on such statement, the custodian shall permit examination and copying of the medical record by another such physician or clinical psychologist selected by the patient, whose licensure, training and experience relative to the patient's condition are at least equivalent to that of the physician or clinical psychologist upon whose opinion the denial is based. The person or entity denying the request shall inform the patient of the patient's right to select another reviewing physician or clinical psychologist under this subsection who shall make a judgment as to whether to make the record available to the patient. Any record copied for review by the physician or clinical psychologist selected by the patient shall be accompanied by a statement from the custodian of the record that the patient's attending physician or clinical psychologist determined that the patient's review of his record would be injurious to the patient's health or well-being.

G. A written consent to allow release of patient records may, but need not, be in the following form:

CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE
INFORMATION

Patient Name

Provider Name

Person, agency or provider to whom disclosure is to be made

Information or Records to be disclosed

As the person signing this consent, I understand that I am giving my permission to the above-named provider or other named third party for disclosure of confidential health care records. I also understand that I have the right to revoke this consent, but that my revocation is not effective until delivered in writing to the person who is in possession of my records. A copy of this consent and a notation concerning the persons or agencies to whom disclosure was made shall be included with my original records. The person who receives the records to which this consent pertains may not redisclose them to anyone else without my separate written consent unless such recipient is a provider who makes a disclosure permitted by law.

This consent expires on (date)

Signature of Patient Date

H. 1. No party to an action shall request the issuance of a subpoena duces tecum for an opposing party's medical records *or cause a subpoena duces tecum to be issued by an attorney* unless a copy of the request for the subpoena *or a copy of the attorney-issued subpoena* is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request *or issuance of the subpoena*. No party to an action shall request *or cause* the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena *or a copy of the attorney-issued subpoena* is provided to the nonparty witness simultaneously with filing the request *or issuance of the attorney-issued subpoena*.

In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting ~~the issuance of~~ *or issuing* the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for subpoena, *or a copy of the subpoena in the case of an*

attorney-issued subpoena, a statement informing them of their rights and remedies. The statement shall include the following language and the heading shall be in boldface capital letters:

NOTICE TO PATIENT

The attached **Request for Subpoena document** means that (insert name of party requesting or causing issuance of the subpoena) has either asked the court to issue a subpoena or a subpoena has been issued by the other party's attorney to your doctor or other health care providers (names of health care providers inserted here) requiring them to produce your medical records. Your doctor or other health care provider is required to respond by providing a copy of your medical records. If you believe your records should not be disclosed and object to their disclosure, you have the right to file a motion with the clerk of the court to quash the subpoena. You may contact the clerk's office to determine the requirements that must be satisfied when filing a motion to quash and you may elect to contact an attorney to represent your interest. If you elect to file a motion to quash, it must be filed as soon as possible before the provider sends out the records in response to the subpoena. If you elect to file a motion to quash, you must notify your doctor or other health care provider(s) that you are filing the motion so that the provider knows to send the records to the clerk of court in a sealed envelope or package for safekeeping while your motion is decided.

2. Any party filing a request for a subpoena duces tecum or causing such a subpoena to be issued for a patient's medical records shall include a Notice to Providers in the same part of the request where the provider is directed where and when to return the records. Such notice shall be in boldface capital letters and shall include the following language:

NOTICE TO PROVIDERS

IF YOU RECEIVE NOTICE THAT YOUR PATIENT HAS FILED A MOTION TO QUASH (OBJECTING TO) THIS SUBPOENA, OR IF YOU FILE A MOTION TO QUASH THIS SUBPOENA, SEND THE RECORDS ONLY TO THE CLERK OF THE COURT WHICH ISSUED THE SUBPOENA OR IN WHICH THE ACTION IS PENDING AS SHOWN ON THE SUBPOENA USING THE FOLLOWING PROCEDURE: PLACE THE RECORDS IN A SEALED ENVELOPE AND ATTACH TO THE SEALED ENVELOPE A COVER LETTER TO THE CLERK OF COURT WHICH STATES THAT CONFIDENTIAL HEALTH CARE RECORDS ARE ENCLOSED AND ARE TO BE HELD UNDER SEAL PENDING THE COURT'S RULING ON THE MOTION TO QUASH THE SUBPOENA. THE SEALED ENVELOPE AND THE COVER LETTER SHALL BE PLACED IN AN OUTER ENVELOPE OR PACKAGE FOR TRANSMITTAL TO THE COURT.

3. Health care providers shall provide a copy of all records as required by a subpoena duces tecum or court order for such medical records. If the health care provider has, however, actual receipt of notice that a motion to quash the subpoena has been filed or if the health care provider files a motion to quash the subpoena for medical records, then the health care provider shall produce the records to the clerk of the court issuing the subpoena or in whose court the action is pending, where the court shall place the records under seal until a determination is made regarding the motion to quash. The securely sealed envelope shall only be opened on order of the judge. In the event the court grants the motion to quash, the records shall be returned to the health care provider in the same sealed envelope in which they were delivered to the court. In the event that a judge orders the sealed envelope to be opened to review the records in camera, a copy of the judge's order shall accompany any records returned to the provider. The records returned to the provider shall be in a securely sealed envelope.

4. It is the duty of any party requesting a subpoena duces tecum for medical records or the attorney issuing the subpoena duces tecum to determine whether the patient whose records are sought is pro se or a nonparty. Any request for a subpoena duces tecum and any attorney-issued subpoena for the medical records of a nonparty or of a pro se party shall direct the provider (in boldface type) not to produce the records until ten days after the date on which the provider is served with the subpoena duces tecum and shall be produced no later than twenty days after the date of such service.

In the event that the individual whose records are being sought files a motion to quash the subpoena, the court shall decide whether good cause has been shown by the discovering party to compel disclosure of the patient's private records over the patient's objections. In determining whether good cause has been shown, the court shall consider (i) the particular purpose for which the information was collected; (ii) the degree to which the disclosure of the records would embarrass, injure, or invade the privacy of the individual; (iii) the effect of the disclosure on the individual's future health care; (iv) the importance of the information to the lawsuit or proceeding; and (v) any other relevant factor.

The provisions of this subsection have no application to subpoenas for medical records requested under § 8.01-413, or issued by a duly authorized administrative agency conducting an investigation, audit, review or proceedings regarding a provider's conduct. The provisions of this subsection apply to the medical records of both minors and adults.

A subpoena for substance abuse records must conform to the requirements of federal law found in 42

423 C.F.R. Part 2, Subpart E.

424 Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and
425 8.01-400.2.

426 **2. That the provisions of this act shall expire on July 1, 2001, unless reenacted by the 2001**
427 **General Assembly. Any subpoena or subpoena duces tecum issued by an attorney in compliance**
428 **with this act shall remain valid notwithstanding the expiration of this act.**

429 **3. That the Virginia Bar Association, with the support of the Virginia Sheriffs Association and**
430 **such other organizations from which it may request assistance, shall conduct a study of the**
431 **effectiveness of this act and report its findings to the General Assembly no later than January 1,**
432 **2001.**