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HOUSE BILL NO. 2452

Offered January 21, 1999

A BILL to amend and reenact §§ 2.1-342, 8.01-413 and 32.1-127.1:03 of the Code of Virginia, relating to patient health records.

Patrons—Williams, Almand, Armstrong, Behm, Bennett, Black, Brink, Councill, Cranwell, Crittenden, Croshaw, Deeds, Grayson, Jackson, Joannou, Jones, D.C., Jones, J.C., McEachin, Moran, Moss, Plum, Robinson, Tate, Thomas, Van Landingham, Watts and Woodrum; Senators: Couric, Edwards, Gartlan, Marsh, Maxwell, Miller, Y.B., Puckett, Reynolds, Ticer and Whipple

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.1-342, 8.01-413 and 32.1-127.1:03 of the Code of Virginia are amended and reenacted as follows:

§ 2.1-342. Official records to be open to inspection; procedure for requesting records and responding to request; charges; exceptions to application of chapter.

A. Except as otherwise specifically provided by law, all official records shall be open to inspection and copying by any citizens of the Commonwealth during the regular office hours of the custodian of such records. Access to such records shall not be denied to citizens of the Commonwealth, representatives of newspapers and magazines with circulation in the Commonwealth, and representatives of radio and television stations broadcasting in or into the Commonwealth. The custodian of such records shall take all necessary precautions for their preservation and safekeeping. Any public body covered under the provisions of this chapter shall make an initial response to citizens requesting records open to inspection within five work days after the receipt of the request by the public body which is the custodian of the requested records. Such citizen request shall designate the requested records with reasonable specificity. A specific reference to this chapter by the requesting citizen in his request shall not be necessary to invoke the provisions of this chapter and the time limits for response by the public body. The response by the public body within such five work days shall be one of the following responses:

1. The requested records shall be provided to the requesting citizen.
2. If the public body determines that an exemption applies to all of the requested records, it may refuse to release such records and provide to the requesting citizen a written explanation as to why the records are not available with the explanation making specific reference to the applicable Code sections which make the requested records exempt.

3. If the public body determines that an exemption applies to a portion of the requested records, it may delete or excise that portion of the records to which an exemption applies, but shall disclose the remainder of the requested records and provide to the requesting citizen a written explanation as to why these portions of the record are not available to the requesting citizen with the explanation making specific reference to the applicable Code sections which make that portion of the requested records exempt. Any reasonably segregatable portion of an official record shall be provided to any person requesting the record after the deletion of the exempt portion.

4. If the public body determines that it is practically impossible to provide the requested records or to determine whether they are available within the five-work-day period, the public body shall so inform the requesting citizen and shall have an additional seven work days in which to provide one of the three preceding responses.

Nothing in this section shall prohibit any public body from petitioning the appropriate court for additional time to respond to a request for records when the request is for an extraordinary volume of records and a response by the public body within the time required by this chapter will prevent the public body from meeting its operational responsibilities. Before proceeding with this petition, however, the public body shall make reasonable efforts to reach an agreement with the requester concerning the production of the records requested.

The public body may make reasonable charges for the copying, search time and computer time expended in the supplying of such records. The public body may also make a reasonable charge for preparing documents produced from a geographic information system at the request of anyone other than the owner of the land that is the subject of the request. However, such charges shall not exceed the actual cost to the public body in supplying such records or documents, except that the public body may charge, on a pro rata per acre basis, for the cost of creating topographical maps developed by the public body, for such maps or portions thereof, which encompass a contiguous area greater than fifty acres.

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60 Such charges for the supplying of requested records shall be estimated in advance at the request of the
61 citizen. The public body may require the advance payment of charges which are subject to advance
62 determination.

63 In any case where a public body determines in advance that search and copying charges for
64 producing the requested documents are likely to exceed \$200, the public body may, before continuing to
65 process the request, require the citizen requesting the information to agree to payment of an amount not
66 to exceed the advance determination by five percent. The period within which the public body must
67 respond under this section shall be tolled for the amount of time that elapses between notice of the
68 advance determination and the response of the citizen requesting the information.

69 Official records maintained by a public body on a computer or other electronic data processing
70 system which are available to the public under the provisions of this chapter shall be made reasonably
71 accessible to the public at reasonable cost. Beginning July 1, 1997, every public body of state
72 government shall compile, and annually update, an index of computer databases which contains at a
73 minimum those databases created by them on or after July 1, 1997. "Computer database" means a
74 structured collection of data or documents residing in a computer. Such index shall be an official record
75 and shall include, at a minimum, the following information with respect to each database listed therein:
76 a list of data fields, a description of the format or record layout, the date last updated, a list of any data
77 fields to which public access is restricted, a description of each format in which the database can be
78 copied or reproduced using the public body's computer facilities, and a schedule of fees for the
79 production of copies in each available form. The form, context, language, and guidelines for the indices
80 and the databases to be indexed shall be developed by the Director of the Department of Information
81 Technology in consultation with the Librarian of Virginia and the State Archivist. The public body shall
82 not be required to disclose its software security, including passwords.

83 Public bodies shall not be required to create or prepare a particular requested record if it does not
84 already exist. Public bodies may, but shall not be required to, abstract or summarize information from
85 official records or convert an official record available in one form into another form at the request of
86 the citizen. The public body shall make reasonable efforts to reach an agreement with the requester
87 concerning the production of the records requested.

88 Failure to make any response to a request for records shall be a violation of this chapter and deemed
89 a denial of the request.

90 B. The following records are excluded from the provisions of this chapter but may be disclosed by
91 the custodian in his discretion, except where such disclosure is prohibited by law:

92 1. Memoranda, correspondence, evidence and complaints related to criminal investigations; adult
93 arrestee photographs when necessary to avoid jeopardizing an investigation in felony cases until such
94 time as the release of such photograph will no longer jeopardize the investigation; reports submitted to
95 the state and local police, to investigators authorized pursuant to § 53.1-16 and to the campus police
96 departments of public institutions of higher education as established by Chapter 17 (§ 23-232 et seq.) of
97 Title 23 in confidence; portions of records of local government crime commissions that would identify
98 individuals providing information about crimes or criminal activities under a promise of anonymity;
99 records of local police departments relating to neighborhood watch programs that include the names,
100 addresses, and operating schedules of individual participants in the program that are provided to such
101 departments under a promise of confidentiality; and all records of persons imprisoned in penal
102 institutions in the Commonwealth provided such records relate to the imprisonment. Information in the
103 custody of law-enforcement officials relative to the identity of any individual other than a juvenile who
104 is arrested and charged, and the status of the charge or arrest, shall not be excluded from the provisions
105 of this chapter.

106 Criminal incident information relating to felony offenses shall not be excluded from the provisions of
107 this chapter; however, where the release of criminal incident information is likely to jeopardize an
108 ongoing criminal investigation or the safety of an individual, cause a suspect to flee or evade detection,
109 or result in the destruction of evidence, such information may be withheld until the above-referenced
110 damage is no longer likely to occur from release of the information.

111 2. Confidential records of all investigations of applications for licenses and permits, and all licensees
112 and permittees made by or submitted to the Alcoholic Beverage Control Board, the State Lottery
113 Department, the Virginia Racing Commission, or the Charitable Gaming Commission.

114 3. State income, business, and estate tax returns, personal property tax returns, scholastic records and
115 personnel records containing information concerning identifiable individuals, except that such access
116 shall not be denied to the person who is the subject thereof, and medical and mental records, except that
117 such records can be personally reviewed by the subject person or a physician of the subject person's
118 choice; however, the subject person's mental records may not be personally reviewed by such person
119 when the subject person's treating physician has made a part of such person's records a written statement
120 that in his opinion a review of such records by the subject person would be injurious to the subject
121 person's physical or mental health or well-being cause actual harm to the patient's physical or mental

health or cause the patient to be an imminent danger to himself or others.

Where the person who is the subject of medical records is confined in a state or local correctional facility, the administrator or chief medical officer of such facility may assert such confined person's right of access to the medical records if the administrator or chief medical officer has reasonable cause to believe that such confined person has an infectious disease or other medical condition from which other persons so confined need to be protected. Medical records shall be reviewed only and shall not be copied by such administrator or chief medical officer. The information in the medical records of a person so confined shall continue to be confidential and shall not be disclosed to any person except the subject by the administrator or chief medical officer of the facility or except as provided by law.

For the purposes of this chapter such statistical summaries of incidents and statistical data concerning patient abuse as may be compiled by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services shall be open to inspection and releasable as provided in subsection A of this section. No such summaries or data shall include any patient-identifying information. Where the person who is the subject of scholastic or medical and mental records is under the age of eighteen, his right of access may be asserted only by his guardian or his parent, including a noncustodial parent, unless such parent's parental rights have been terminated or a court of competent jurisdiction has restricted or denied such access. In instances where the person who is the subject thereof is an emancipated minor or a student in a state-supported institution of higher education, such right of access may be asserted by the subject person.

4. Memoranda, working papers and correspondence (i) held by or requested from members of the General Assembly or the Division of Legislative Services or (ii) held or requested by the Office of the Governor or Lieutenant Governor, Attorney General or the mayor or other chief executive officer of any political subdivision of the Commonwealth or the president or other chief executive officer of any state-supported institution of higher education. This exclusion shall not apply to memoranda, studies or other papers held or requested by the mayor or other chief executive officer of any political subdivision which are specifically concerned with the evaluation of performance of the duties and functions of any locally elected official and were prepared after June 30, 1992, nor shall this exclusion apply to agenda packets prepared and distributed to public bodies for use at a meeting.

Except as provided in § 30-28.18, memoranda, working papers and correspondence of a member of the General Assembly held by the Division of Legislative Services shall not be released by the Division without the prior consent of the member.

5. Written opinions of the city, county and town attorneys of the cities, counties and towns in the Commonwealth and any other writing protected by the attorney-client privilege.

6. Memoranda, working papers and records compiled specifically for use in litigation or as a part of an active administrative investigation concerning a matter which is properly the subject of an executive or closed meeting under § 2.1-344 and material furnished in confidence with respect thereto.

7. Confidential letters and statements of recommendation placed in the records of educational agencies or institutions respecting (i) admission to any educational agency or institution, (ii) an application for employment, or (iii) receipt of an honor or honorary recognition.

8. Library records which can be used to identify both (i) any library patron who has borrowed material from a library and (ii) the material such patron borrowed.

9. Any test or examination used, administered or prepared by any public body for purposes of evaluation of (i) any student or any student's performance, (ii) any employee or employment seeker's qualifications or aptitude for employment, retention, or promotion, or (iii) qualifications for any license or certificate issued by any public body.

As used in this subdivision 9, "test or examination" shall include (i) any scoring key for any such test or examination and (ii) any other document which would jeopardize the security of such test or examination. Nothing contained in this subdivision 9 shall prohibit the release of test scores or results as provided by law, or limit access to individual records as is provided by law. However, the subject of such employment tests shall be entitled to review and inspect all documents relative to his performance on such employment tests.

When, in the reasonable opinion of such public body, any such test or examination no longer has any potential for future use, and the security of future tests or examinations will not be jeopardized, such test or examination shall be made available to the public. However, minimum competency tests administered to public school children shall be made available to the public contemporaneously with statewide release of the scores of those taking such tests, but in no event shall such tests be made available to the public later than six months after the administration of such tests.

10. Applications for admission to examinations or for licensure and scoring records maintained by the Department of Health Professions or any board in that department on individual licensees or applicants. However, such material may be made available during normal working hours for copying, at the requester's expense, by the individual who is the subject thereof, in the offices of the Department of

- 183 Health Professions or in the offices of any health regulatory board, whichever may possess the material.
184 11. Records of active investigations being conducted by the Department of Health Professions or by
185 any health regulatory board in the Commonwealth.
186 12. Memoranda, legal opinions, working papers and records recorded in or compiled exclusively for
187 executive or closed meetings lawfully held pursuant to § 2.1-344.
188 13. Reports, documentary evidence and other information as specified in §§ 2.1-373.2 and 63.1-55.4.
189 14. Proprietary information gathered by or for the Virginia Port Authority as provided in
190 § 62.1-132.4 or § 62.1-134.1.
191 15. Contract cost estimates prepared for the confidential use of the Department of Transportation in
192 awarding contracts for construction or the purchase of goods or services and records, documents and
193 automated systems prepared for the Department's Bid Analysis and Monitoring Program.
194 16. Vendor proprietary information software which may be in the official records of a public body.
195 For the purpose of this section, "vendor proprietary software" means computer programs acquired from a
196 vendor for purposes of processing data for agencies or political subdivisions of the Commonwealth.
197 17. Data, records or information of a proprietary nature produced or collected by or for faculty or
198 staff of state institutions of higher learning, other than the institutions' financial or administrative
199 records, in the conduct of or as a result of study or research on medical, scientific, technical or scholarly
200 issues, whether sponsored by the institution alone or in conjunction with a governmental body or a
201 private concern, where such data, records or information has not been publicly released, published,
202 copyrighted or patented.
203 18. Financial statements not publicly available filed with applications for industrial development
204 financings.
205 19. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
206 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
207 the political subdivision.
208 20. Confidential proprietary records, voluntarily provided by private business pursuant to a promise
209 of confidentiality from the Department of Business Assistance, the Virginia Economic Development
210 Partnership or local or regional industrial or economic development authorities or organizations, used by
211 the Department, the Partnership, or such entities for business, trade and tourism development; and
212 memoranda, working papers or other records related to businesses that are considering locating or
213 expanding in Virginia, prepared by the Partnership, where competition or bargaining is involved and
214 where, if such records are made public, the financial interest of the governmental unit would be
215 adversely affected.
216 21. Information which was filed as confidential under the Toxic Substances Information Act
217 (§ 32.1-239 et seq.), as such Act existed prior to July 1, 1992.
218 22. Documents as specified in § 58.1-3.
219 23. Confidential records, including victim identity, provided to or obtained by staff in a rape crisis
220 center or a program for battered spouses.
221 24. Computer software developed by or for a state agency, state-supported institution of higher
222 education or political subdivision of the Commonwealth.
223 25. Investigator notes, and other correspondence and information, furnished in confidence with
224 respect to an active investigation of individual employment discrimination complaints made to the
225 Department of Personnel and Training; however, nothing in this section shall prohibit the disclosure of
226 information taken from inactive reports in a form which does not reveal the identity of charging parties,
227 persons supplying the information or other individuals involved in the investigation.
228 26. Fisheries data which would permit identification of any person or vessel, except when required
229 by court order as specified in § 28.2-204.
230 27. Records of active investigations being conducted by the Department of Medical Assistance
231 Services pursuant to Chapter 10 (§ 32.1-323 et seq.) of Title 32.1.
232 28. Documents and writings furnished by a member of the General Assembly to a meeting of a
233 standing committee, special committee or subcommittee of his house established solely for the purpose
234 of reviewing members' annual disclosure statements and supporting materials filed under § 2.1-639.40 or
235 of formulating advisory opinions to members on standards of conduct, or both.
236 29. Customer account information of a public utility affiliated with a political subdivision of the
237 Commonwealth, including the customer's name and service address, but excluding the amount of utility
238 service provided and the amount of money paid for such utility service.
239 30. Investigative notes and other correspondence and information furnished in confidence with
240 respect to an investigation or conciliation process involving an alleged unlawful discriminatory practice
241 under the Virginia Human Rights Act (§ 2.1-714 et seq.); however, nothing in this section shall prohibit
242 the distribution of information taken from inactive reports in a form which does not reveal the identity
243 of the parties involved or other persons supplying information.
244 31. Investigative notes; proprietary information not published, copyrighted or patented; information

obtained from employee personnel records; personally identifiable information regarding residents, clients or other recipients of services; and other correspondence and information furnished in confidence to the Department of Social Services in connection with an active investigation of an applicant or licensee pursuant to Chapters 9 (§ 63.1-172 et seq.) and 10 (§ 63.1-195 et seq.) of Title 63.1; however, nothing in this section shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information, or other individuals involved in the investigation.

32. Reports, manuals, specifications, documents, minutes or recordings of staff meetings or other information or materials of the Virginia Board of Corrections, the Virginia Department of Corrections or any institution thereof to the extent, as determined by the Director of the Department of Corrections or his designee or of the Virginia Board of Juvenile Justice, the Virginia Department of Juvenile Justice or any facility thereof to the extent as determined by the Director of the Department of Juvenile Justice, or his designee, that disclosure or public dissemination of such materials would jeopardize the security of any correctional or juvenile facility or institution, as follows:

(i) Security manuals, including emergency plans that are a part thereof;

(ii) Engineering and architectural drawings of correctional and juvenile facilities, and operational specifications of security systems utilized by the Departments, provided the general descriptions of such security systems, cost and quality shall be made available to the public;

(iii) Training manuals designed for correctional and juvenile facilities to the extent that they address procedures for institutional security, emergency plans and security equipment;

(iv) Internal security audits of correctional and juvenile facilities, but only to the extent that they specifically disclose matters described in (i), (ii), or (iii) above or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution;

(v) Minutes or recordings of divisional, regional and institutional staff meetings or portions thereof to the extent that such minutes deal with security issues listed in (i), (ii), (iii), and (iv) of this subdivision;

(vi) Investigative case files by investigators authorized pursuant to § 53.1-16; however, nothing in this section shall prohibit the disclosure of information taken from inactive reports in a form which does not reveal the identity of complainants or charging parties, persons supplying information, confidential sources, or other individuals involved in the investigation, or other specific operational details the disclosure of which would jeopardize the security of a correctional or juvenile facility or institution; nothing herein shall permit the disclosure of materials otherwise exempt as set forth in subdivision 1 of subsection B of this section;

(vii) Logs or other documents containing information on movement of inmates, juvenile clients or employees; and

(viii) Documents disclosing contacts between inmates, juvenile clients and law-enforcement personnel.

Notwithstanding the provisions of this subdivision, reports and information regarding the general operations of the Departments, including notice that an escape has occurred, shall be open to inspection and copying as provided in this section.

33. Personal information, as defined in § 2.1-379, (i) filed with the Virginia Housing Development Authority concerning individuals who have applied for or received loans or other housing assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise assisted by the Virginia Housing Development Authority, (ii) concerning persons participating in or persons on the waiting list for federally funded rent-assistance programs, or (iii) filed with any local redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or persons on the waiting list for housing assistance programs funded by local governments or by any such authority. However, access to one's own information shall not be denied.

34. Documents regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441, if disclosure of them would have a detrimental effect upon the negotiating position of a governing body or on the establishment of the terms, conditions and provisions of the siting agreement.

35. Appraisals and cost estimates of real property subject to a proposed purchase, sale or lease, prior to the completion of such purchase, sale or lease.

36. Records containing information on the site specific location of rare, threatened, endangered or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and archaeological sites if, in the opinion of the public body which has the responsibility for such information, disclosure of the information would jeopardize the continued existence or the integrity of the resource. This exemption shall not apply to requests from the owner of the land upon which the resource is located.

37. Official records, memoranda, working papers, graphics, video or audio tapes, production models, data and information of a proprietary nature produced by or for or collected by or for the State Lottery Department relating to matters of a specific lottery game design, development, production, operation,

ticket price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or marketing, where such official records have not been publicly released, published, copyrighted or patented. Whether released, published or copyrighted, all game-related information shall be subject to public disclosure under this chapter upon the first day of sales for the specific lottery game to which it pertains.

38. Official records of studies and investigations by the State Lottery Department of (i) lottery agents, (ii) lottery vendors, (iii) lottery crimes under §§ 58.1-4014 through 58.1-4018, (iv) defects in the law or regulations which cause abuses in the administration and operation of the lottery and any evasions of such provisions, or (v) use of the lottery as a subterfuge for organized crime and illegal gambling where such official records have not been publicly released, published or copyrighted. All studies and investigations referred to under clauses (iii), (iv) and (v) shall be subject to public disclosure under this chapter upon completion of the study or investigation.

39. Those portions of engineering and construction drawings and plans submitted for the sole purpose of complying with the building code in obtaining a building permit which would identify specific trade secrets or other information the disclosure of which would be harmful to the competitive position of the owner or lessee; however, such information shall be exempt only until the building is completed. Information relating to the safety or environmental soundness of any building shall not be exempt from disclosure.

40. [Repealed.]

41. Records concerning reserves established in specific claims administered by the Department of General Services through its Division of Risk Management as provided in Article 5.1 (§ 2.1-526.1 et seq.) of Chapter 32 of this title, or by any county, city, or town.

42. Information and records collected for the designation and verification of trauma centers and other specialty care centers within the Statewide Emergency Medical Services System and Services pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1.

43. Reports and court documents required to be kept confidential pursuant to § 37.1-67.3.

44. [Repealed.]

45. Investigative notes; correspondence and information furnished in confidence with respect to an investigation; and official records otherwise exempted by this chapter or any Virginia statute, provided to or produced by or for the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission; or investigative notes, correspondence, documentation and information furnished and provided to or produced by or for the Department of the State Internal Auditor with respect to an investigation initiated through the State Employee Fraud, Waste and Abuse Hotline. Nothing in this chapter shall prohibit disclosure of information from the records of completed investigations in a form that does not reveal the identity of complainants, persons supplying information or other individuals involved in the investigation; however, disclosure, unless such disclosure is prohibited by this section, of information from the records of completed investigations shall include, but is not limited to, the agency involved, the identity of the person who is the subject of the complaint, the nature of the complaint, and the actions taken to resolve the complaint. In the event an investigation does not lead to corrective action, the identity of the person who is the subject of the complaint may be released only with the consent of the subject person.

46. Data formerly required to be submitted to the Commissioner of Health relating to the establishment of new or expansion of existing clinical health services, acquisition of major medical equipment, or certain projects requiring capital expenditures pursuant to former § 32.1-102.3:4.

47. Documentation or other information which describes the design, function, operation or access control features of any security system, whether manual or automated, which is used to control access to or use of any automated data processing or telecommunications system.

48. Confidential financial statements, balance sheets, trade secrets, and revenue and cost projections provided to the Department of Rail and Public Transportation, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration.

49. In the case of corporations organized by the Virginia Retirement System, (i) proprietary information provided by, and financial information concerning, coventurers, partners, lessors, lessees, or investors, and (ii) records concerning the condition, acquisition, disposition, use, leasing, development, coventuring, or management of real estate the disclosure of which would have a substantial adverse impact on the value of such real estate or result in a competitive disadvantage to the corporation or subsidiary.

50. Confidential proprietary records related to inventory and sales, voluntarily provided by private energy suppliers to the Department of Mines, Minerals and Energy, used by that Department for energy

contingency planning purposes or for developing consolidated statistical information on energy supplies.

51. Confidential proprietary information furnished to the Board of Medical Assistance Services or the Medicaid Prior Authorization Advisory Committee pursuant to Article 4 (§ 32.1-331.12 et seq.) of Chapter 10 of Title 32.1.

52. [Repealed.]

53. Proprietary, commercial or financial information, balance sheets, trade secrets, and revenue and cost projections provided by a private transportation business to the Virginia Department of Transportation and the Department of Rail and Public Transportation for the purpose of conducting transportation studies needed to obtain grants or other financial assistance under the Intermodal Surface Transportation Efficiency Act of 1991 (P.L. 102-240) for transportation projects, provided such information is exempt under the federal Freedom of Information Act or the federal Interstate Commerce Act or other laws administered by the Interstate Commerce Commission or the Federal Rail Administration with respect to data provided in confidence to the Interstate Commerce Commission and the Federal Railroad Administration. However, the exemption provided by this subdivision shall not apply to any wholly owned subsidiary of a public body.

54. Names and addresses of subscribers to Virginia Wildlife magazine, published by the Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing that the Department not release such information.

55. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Museum of Fine Arts to the extent that disclosure or public dissemination of such materials would jeopardize the security of the Museum or any warehouse controlled by the Museum, as follows:

a. Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

b. Surveillance techniques;

c. Installation, operation, or utilization of any alarm technology;

d. Engineering and architectural drawings of the Museum or any warehouse;

e. Transportation of the Museum's collections, including routes and schedules; or

f. Operation of the Museum or any warehouse used by the Museum involving the:

(1) Number of employees, including security guards, present at any time; or

(2) Busiest hours, with the maximum number of visitors in the Museum.

56. Reports, documents, memoranda or other information or materials which describe any aspect of security used by the Virginia Department of Alcoholic Beverage Control to the extent that disclosure or public dissemination of such materials would jeopardize the security of any government store as defined in Title 4.1, or warehouse controlled by the Department of Alcoholic Beverage Control, as follows:

(i) Operational, procedural or tactical planning documents, including any training manuals to the extent they discuss security measures;

(ii) Surveillance techniques;

(iii) The installation, operation, or utilization of any alarm technology;

(iv) Engineering and architectural drawings of such government stores or warehouses;

(v) The transportation of merchandise, including routes and schedules; and

(vi) The operation of any government store or the central warehouse used by the Department of Alcoholic Beverage Control involving the:

a. Number of employees present during each shift;

b. Busiest hours, with the maximum number of customers in such government store; and

c. Banking system used, including time and place of deposits.

57. Information required to be provided pursuant to § 54.1-2506.1.

58. Confidential information designated as provided in subsection D of § 11-52 as trade secrets or proprietary information by any person who has submitted to a public body an application for prequalification to bid on public construction projects in accordance with subsection B of § 11-46.

59. All information and records acquired during a review of any child death by the State Child Fatality Review Team established pursuant to § 32.1-283.1.

60. Investigative notes, correspondence, documentation and information provided to or produced by or for the committee or the auditor with respect to an investigation or audit conducted pursuant to § 15.1-765.2. Nothing in this section shall prohibit disclosure of information from the records of completed investigations or audits in a form that does not reveal the identity of complainants or persons supplying information.

61. Financial, medical, rehabilitative and other personal information concerning applicants for or recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

62. Confidential proprietary records which are voluntarily provided by a private entity pursuant to a

429 proposal filed with a public entity under the Public-Private Transportation Act of 1995 (§ 56-556 et
430 seq.), pursuant to a promise of confidentiality from the responsible public entity, used by the responsible
431 public entity for purposes related to the development of a qualifying transportation facility; and
432 memoranda, working papers or other records related to proposals filed under the Public-Private
433 Transportation Act of 1995, where, if such records were made public, the financial interest of the public
434 or private entity involved with such proposal or the process of competition or bargaining would be
435 adversely affected. In order for confidential proprietary information to be excluded from the provisions
436 of this chapter, the private entity shall (i) invoke such exclusion upon submission of the data or other
437 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
438 which protection is sought, and (iii) state the reasons why protection is necessary. For the purposes of
439 this subdivision, the terms public entity and private entity shall be defined as they are defined in the
440 Public-Private Transportation Act of 1995.

441 63. Records of law-enforcement agencies, to the extent that such records contain specific tactical
442 plans, the disclosure of which would jeopardize the safety or security of law-enforcement personnel or
443 the general public; engineering plans, architectural drawings, or operational specifications of
444 governmental law-enforcement facilities, including but not limited to courthouses, jails, and detention
445 facilities, to the extent that disclosure could jeopardize the safety or security of law-enforcement offices;
446 however, general descriptions shall be provided to the public upon request.

447 64. All records of the University of Virginia or the University of Virginia Medical Center which
448 contain proprietary, business-related information pertaining to the operations of the University of
449 Virginia Medical Center, including its business development or marketing strategies and its activities
450 with existing or future joint venturers, partners, or other parties with whom the University of Virginia
451 Medical Center has formed, or forms, any arrangement for the delivery of health care, if disclosure of
452 such information would be harmful to the competitive position of the Medical Center.

453 65. Patient level data collected by the Board of Health and not yet processed, verified, and released,
454 pursuant to § 32.1-276.9, to the Board by the nonprofit organization with which the Commissioner of
455 Health has contracted pursuant to § 32.1-276.4.

456 66. Records of the Medical College of Virginia Hospitals Authority pertaining to any of the
457 following: (i) an individual's qualifications for or continued membership on its medical or teaching
458 staffs; proprietary information gathered by or in the possession of the Authority from third parties
459 pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
460 awarding contracts for construction or the purchase of goods or services; data, records or information of
461 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
462 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
463 the identity, accounts or account status of any customer of the Authority; consulting or other reports
464 paid for by the Authority to assist the Authority in connection with its strategic planning and goals; and
465 the determination of marketing and operational strategies where disclosure of such strategies would be
466 harmful to the competitive position of the Authority; and (ii) data, records or information of a
467 proprietary nature produced or collected by or for employees of the Authority, other than the Authority's
468 financial or administrative records, in the conduct of or as a result of study or research on medical,
469 scientific, technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with
470 a governmental body or a private concern, when such data, records or information have not been
471 publicly released, published, copyrighted or patented.

472 67. Confidential proprietary information or trade secrets, not publicly available, provided by a private
473 person or entity to the Virginia Resources Authority or to a fund administered in connection with
474 financial assistance rendered or to be rendered by the Virginia Resources Authority where, if such
475 information is made public, the financial interest of the private person or entity would be adversely
476 affected, and, after June 30, 1997, where such information was provided pursuant to a promise of
477 confidentiality.

478 68. Confidential proprietary records which are provided by a franchisee under § 15.2-2108 to its
479 franchising authority pursuant to a promise of confidentiality from the franchising authority which
480 relates to the franchisee's potential provision of new services, adoption of new technologies or
481 implementation of improvements, where such new services, technologies or improvements have not been
482 implemented by the franchisee on a nonexperimental scale in the franchise area, and where, if such
483 records were made public, the competitive advantage or financial interests of the franchisee would be
484 adversely affected. In order for confidential proprietary information to be excluded from the provisions
485 of this chapter, the franchisee shall (i) invoke such exclusion upon submission of the data or other
486 materials for which protection from disclosure is sought, (ii) identify the data or other materials for
487 which protection is sought, and (iii) state the reason why protection is necessary.

488 69. Records of the Intervention Program Committee within the Department of Health Professions to
489 the extent such records may identify any practitioner who may be, or who is actually, impaired to the
490 extent disclosure is prohibited by § 54.1-2517.

70. Records submitted as a grant application, or accompanying a grant application, to the Commonwealth Neurotrauma Initiative Advisory Board pursuant to Article 12 (§ 32.1-73.1 et seq.) of Chapter 2 of Title 32.1, to the extent such records contain: (i) medical or mental records, or other data identifying individual patients, or (ii) proprietary business or research related information produced or collected by the applicant in the conduct of or as a result of study or research on medical, rehabilitative, scientific, technical or scholarly issues, when such information has not been publicly released, published, copyrighted or patented, if the disclosure of such information would be harmful to the competitive position of the applicant.

71. Information which would disclose the security aspects of a system safety program plan adopted pursuant to 49 C.F.R. Part 659 by the Commonwealth's designated Rail Fixed Guideway Systems Safety Oversight agency; and information in the possession of such agency the release of which would jeopardize the success of an ongoing investigation of a rail accident or other incident threatening railway safety.

72. Documents and other information of a proprietary nature furnished by a supplier of charitable gaming supplies to the Charitable Gaming Commission pursuant to subsection E of § 18.2-340.34.

73. Personal information, as defined in § 2.1-379, provided to the Board of the Virginia Higher Education Tuition Trust Fund or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of Title 23. Nothing in this subdivision shall be construed to prohibit disclosure or publication of information in a statistical or other form which does not identify individuals or provide personal information. Individuals shall be provided access to their own personal information.

74. Any record copied, recorded or received by the Commissioner of Health in the course of an examination, investigation or review of a managed care health insurance plan licensee pursuant to §§ 32.1-137.4 and 32.1-137.5, including books, records, files, accounts, papers, documents, and any or all computer or other recordings.

C. Neither any provision of this chapter nor any provision of Chapter 26 (§ 2.1-377 et seq.) of this title shall be construed as denying public access to contracts between a public official and a public body, other than contracts settling public employee employment disputes held confidential as personnel records under subdivision 3 of subsection B of this section, or to records of the position, job classification, official salary or rate of pay of, and to records of the allowances or reimbursements for expenses paid to, any public officer, official or employee at any level of state, local or regional government in the Commonwealth or to the compensation or benefits paid by any corporation organized by the Virginia Retirement System or its officers or employees. The provisions of this subsection, however, shall not apply to records of the official salaries or rates of pay of public employees whose annual rate of pay is \$10,000 or less.

D. No provision of this chapter shall be construed to afford any rights to any person incarcerated in a state, local or federal correctional facility, whether or not such facility is (i) located in the Commonwealth or (ii) operated pursuant to the Corrections Private Management Act (§ 53.1-261 et seq.). However, this subsection shall not be construed to prevent an incarcerated person from exercising his constitutionally protected rights, including but not limited to his rights to call for evidence in his favor in a criminal prosecution.

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

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

Any hospital, nursing facility, physician, or other health care provider whose records or papers relating to any such patient are subpoenaed for production under this section or the Rules of the Supreme Court of Virginia may comply with the subpoena by a timely mailing to the clerk issuing the subpoena properly authenticated copies, photographs or microphotographs in lieu of the originals. The court whose clerk issued the subpoena may, after notice to such hospital, nursing facility, physician, or other health care provider, enter an order requiring production of the originals, if available, of any stored records or papers whose copies, photographs or microphotographs are not sufficiently legible. The party requesting the subpoena shall be liable for the reasonable charges of the hospital, nursing facility, physician, or other health care provider for the service of maintaining, retrieving, reviewing, preparing, copying and mailing the items produced. Except for copies of X-ray photographs, however, such charges

552 shall not exceed fifty cents for each page up to fifty pages and twenty-five cents a page thereafter for
553 copies from paper and one dollar per page for copies from microfilm or other micrographic process,
554 plus all postage and shipping costs and a search and handling fee not to exceed ten dollars.

555 B. Copies of hospital, nursing facility, physician's, or other health care provider's records or papers
556 shall be furnished within fifteen days of such request to the patient or his attorney upon such patient's or
557 attorney's written request, which request shall comply with the requirements of § 32.1-127.1:03.
558 However, copies of a patient's records shall not be furnished to such patient where the patient's treating
559 physician has made a part of the patient's records a written statement that in his opinion the furnishing
560 to or review by the patient of such records would be ~~injurious to the patient's health or well-being~~ *cause*
561 *actual harm to the patient's physical or mental health or cause the patient to be an imminent danger to*
562 *himself or others*, but in any such case such records shall be furnished to the patient's attorney within
563 fifteen days of the date of such request. A reasonable charge may be made for the service of
564 maintaining, retrieving, reviewing and preparing such copies. Except for copies of X-ray photographs,
565 however, such charges shall not exceed fifty cents per page for up to fifty pages and twenty-five cents a
566 page thereafter for copies from paper and one dollar per page for copies from microfilm or other
567 micrographic process, plus all postage and shipping costs and a search and handling fee not to exceed
568 ten dollars. Any hospital, nursing facility, physician, or other health care provider receiving such a
569 request from a patient's attorney shall require a writing signed by the patient confirming the attorney's
570 authority to make the request.

571 C. Upon the failure of any hospital, nursing facility, physician, or other health care provider to
572 comply with any written request made in accordance with subsection B within the period of time
573 specified in that subsection and within the manner specified in § 32.1-127.1:03, the patient or his
574 attorney may by affidavit filed with the clerk of the circuit court wherein any eventual suit, if any,
575 would be required to be filed, upon payment of the fees required by subdivision (23) of § 14.1-112, and
576 fees for service, request that the clerk subpoena such records or papers. The clerk shall thereupon issue
577 a subpoena, returnable within twenty days of proper service, directing the hospital, nursing facility,
578 physician, or other health care provider to produce and furnish copies of the reports and papers to him,
579 whereupon, the clerk shall make the same available to the patient or his attorney. If the court finds that
580 a hospital, nursing facility, physician, or other health care provider willfully refused to comply with a
581 written request made in accordance with subsection B, either by willfully or arbitrarily refusing or by
582 imposing a charge in excess of the reasonable expense of making the copies and processing the request
583 for records, the court may award damages for all expenses incurred by the patient to obtain such copies,
584 including court costs and reasonable attorney's fees.

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

589 E. Health care provider, as used in this section, shall have the same meaning as provided in
590 § 32.1-127.1:03 and shall also include an independent medical copy retrieval service contracted to
591 provide the service of retrieving, reviewing, and preparing such copies for distribution.

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

595 § 32.1-127.1:03. Patient Health Records Privacy.

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

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

604 No third party to whom disclosure of patient records was made by a provider shall redisclose or
605 otherwise reveal the records of a patient, beyond the purpose for which such disclosure was made,
606 without first obtaining the patient's specific consent to such redisclosure. This redisclosure prohibition
607 shall not, however, prevent any provider who receives records from another provider from making
608 subsequent disclosures permitted under this section

609 B. As used in this section:

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

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

613 "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.

"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 is 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 pursuant to the deemed consent provisions of §§ 37.1-226

675 and 37.1-227 when the patient has requested the provider to submit bills to the third-party payor for
 676 payment under a contract or insurance policy;

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

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

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

684 20. To the patient, except as provided in subsections E and F of this section and subsection B of
 685 § 8.01-413;

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

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

691 23. Records of a deceased or mentally incapacitated patient to the personal representative or executor
 692 of the deceased patient or the legal guardian or committee of the incompetent or incapacitated patient or
 693 if there is no such person appointed, to the following persons in the following order of priority: a
 694 spouse, an adult son or daughter, either parent, an adult brother or sister, or any other relative of the
 695 deceased patient in order of blood relationship.

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

707 F. Except as provided in subsection B of § 8.01-413, copies of a patient's records shall not be
 708 furnished to such patient or anyone authorized to act on the patient's behalf where the patient's attending
 709 physician or the patient's clinical psychologist has made a part of the patient's record a written statement
 710 that, in his opinion, the furnishing to or review by the patient of such records would be ~~injurious to the~~
 711 ~~patient's health or well-being~~ *cause actual harm to the patient's physical or mental health or cause the*
 712 *patient to be an imminent danger to himself or others. A copy of the written statement shall be provided*
 713 *to the patient or anyone authorized to act on behalf of the patient at the time a request for copies of*
 714 *records is denied under this subsection.* If any custodian of medical records denies a request for copies
 715 of records based on such statement, the custodian shall permit examination and copying of the medical
 716 record by another such physician or clinical psychologist selected by the patient, whose licensure,
 717 training and experience relative to the patient's condition is at least equivalent to that of the physician or
 718 clinical psychologist upon whose opinion the denial is based. The person or entity denying the request
 719 shall inform the patient of the patient's right to select another reviewing physician or clinical
 720 psychologist under this subsection who shall make a judgment as to whether to make the record
 721 available to the patient. Any record copied for review by the physician or clinical psychologist selected
 722 by the patient shall be accompanied by a statement from the custodian of the record that the patient's
 723 attending physician or clinical psychologist determined that the patient's review of his record would be
 724 ~~injurious to the patient's health or well-being~~ *cause actual harm to the patient's physical or mental*
 725 *health or cause the patient to be an imminent danger to himself or others.*

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

727 CONSENT TO RELEASE OF CONFIDENTIAL HEALTH CARE
 728 INFORMATION

729 Patient Name.....

730 Provider Name.....

731 Person, agency or provider to whom

732 disclosure is to be made.....

733 Information or Records to be disclosed.....

734 As the person signing this consent, I understand that I am giving my
 735 permission to the above-named provider or other named third party for
 736 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 unless a copy of the request for the subpoena is provided to opposing counsel or the opposing party if they are pro se, simultaneously with filing the request. No party to an action shall request the issuance of a subpoena duces tecum for the medical records of a nonparty witness unless a copy of the request for the subpoena is provided to the nonparty witness simultaneously with filing the request. In instances where medical records being subpoenaed are those of a pro se party or nonparty witness, the party requesting the issuance of the subpoena shall deliver to the pro se party or nonparty witness together with the copy of the request for 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 means that (insert name of party requesting subpoena) has asked the court to issue a subpoena 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 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 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, 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

798 order shall accompany any records returned to the provider. The records returned to the provider shall
799 be in a securely sealed envelope.

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

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

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

816 A subpoena for substance abuse records ~~must~~ *shall* conform to the requirements of federal law found
817 in 42 C.F.R. Part 2, Subpart E.

818 Providers may testify about the medical records of a patient in compliance with §§ 8.01-399 and
819 8.01-400.2.