

## WHITING FORENSIC HOSPITAL OPERATIONAL PROCEDURE MANUAL

<b>SECTION II:</b>	ORGANIZATION FOCUSED FUNCTIONS
<b>CHAPTER 9:</b>	Management of Information
<b>PROCEDURE 9.4:</b>	<b>Subpoena of Medical Records</b>
<b>Governing Body Approval:</b>	April 27, 2018
<b>REVISED:</b>	

**PURPOSE:** To insure the Subpoena of Medical Records are processed according to State and Federal Laws and Regulations.

**SCOPE:** Clinical, Administrative Staff; and HIM

**POLICY:**

The Director of Accreditation, Compliance and Performance Improvement/designee, responds to all subpoenas for the production of documents from patient medical records. Any staff served with a subpoena, which includes a directive to produce Whiting Forensic Hospital (WFH) medical records, immediately contacts the Director of Accreditation, Compliance and Performance Improvement.

As instructed by the Director of Accreditation, Compliance and Performance Improvement, or in his/her absence, the Medical Record Supervisor responds to subpoenas. Copies of the Subpoena, Court Order, and Certification are forwarded to the Director of Accreditation, Compliance and Performance Improvement upon receipt of the Subpoena/Court Order.

*Definitions:*

**Connecticut General Statutes Governing Subpoena of Medical Records:**

- A. Authenticity of Medical Record by the Director of Accreditation, Compliance and Performance Improvement: *C.G.S. Sec 4-104: Admission of Medical Record as Evidence*

- “Any and all parts of any such record or copy, if not otherwise inadmissible, shall be admitted in evidence without any preliminary testimony, if there is attached thereto the certification in affidavit form of the person in charge of the record room of the hospital or his authorized assistant indicating that such record or copy is the original record or a copy thereof, made in the regular course of the business of the hospital, and that it was the regular course of such business to make such record at the time of the transactions, occurrences or events recorded therein or within a reasonable time thereafter.”
  - B. As requested by the attorney issuing the subpoena, the Director of Accreditation, Compliance and Performance Improvement may attend court and give testimony regarding the authenticity of the medical record.
2. Time Frame for Serving a Subpoena C.G.S. Sec 4-104:
- “A subpoena directing production of such hospital record shall be served not less than twenty-four hours before the time for production, provided such subpoena shall be valid if served less than twenty-four hours before the time of production if written notice of intent to serve such subpoena has been delivered to the person in charge of the record room of such hospital not less than twenty-four hours nor more than two weeks before such time for production.”

## **PROCEDURE:**

1. Acceptance of Subpoena

Any HIM employee may accept a subpoena for the production of medical records. The sheriff, or other process server, records the date and time of service on the subpoena. The subpoena is immediately given to the Director of Accreditation, Compliance and Performance Improvement. WFH complies with the request in accordance with state and federal laws and regulations.

2. Subpoena of Mental Health and Substance Abuse Records

Based on Connecticut General Statutes (C.G.S.) Section 4-104, Inspection and Subpoena of Hospital Records and Federal Regulations 42 CFR2, records are not released. A subpoena must be accompanied by an order from the court signed by the presiding judge or accompanied by a signed authorization from the patient or their personal representative to produce the record.

3. Obtaining Patient Authorization or Court Order to Comply with Subpoena Request

The Director of Accreditation, Compliance and Performance Improvement contacts the Commissioner of the Superior Court (the attorney issuing the subpoena) to determine if:

- A. An authorization may be obtained from the patient/personal representative to release the records to the court.
  - 1. In cases where the patient is only available to sign an authorization at court on the day the record is to be presented to court, HIM staff brings a blank authorization for the patient to sign prior to delivery of the record to the clerk of the court.

- B. An order from the court may be obtained from the presiding judge to release the records to court.

#### 4. Court Order for the Production of Medical Records

The Court Order to produce medical records or medical record documentation must be signed by the presiding judge to be valid. When the signed court order is received by HIM, the Director of Accreditation, Compliance and Performance Improvement:

- A. Contacts DMHAS Legal Council to review the court order to insure it is in compliance with State and Federal Laws and Regulations.
- B. If the court order for the production of medical record documents is valid the documentation is prepared as outlined in Section F.
- C. If the court order for the production of medical record documents does not meet State and Federal Laws and Regulations, DMHAS Legal Council advises what additional actions may be required to include:
  - 1. The Director of Accreditation, Compliance and Performance Improvement is instructed to attend the court hearing
  - 2. Request that the presiding judge instruct the patient/legal representative to sign an authorization to release the medical records to the court.
  - 3. Inform the court that WFH is unable to comply with the Subpoena and/or Court Order.

#### E. Court Proceeding (as directed by DMHAS Legal Counsel)

- 1. The medical record and certification of authenticity is prepared as outlined in Section F.
- 2. The Director of Accreditation, Compliance and Performance Improvement brings the certified sealed record and a blank authorization for the release of the record to court on the day and time specified in the subpoena.
- 3. Upon arrival to court, the Director of Accreditation, Compliance and Performance Improvement notifies the clerk of the court that WFH is unable to comply with the subpoena and/or court order.
- 4. The presiding judge will have the Director of Accreditation, Compliance and Performance Improvement address the court regarding the court's request for the production of a medical record.
- 5. The Director of Accreditation, Compliance and Performance Improvement informs the court when WFH is unable to obtain an authorization from the patient/legal representative and/or requests the court to issue an order to release the records to the court.
  - a. As instructed by DMHAS Legal Counsel testimony to include:
    - 1) I have been directed to inform the court, for the court record, that the Department of Mental Health and Addiction Services can neither confirm nor deny the existence of a medical record without written authorization from the patient or under court order.

- 2) These records are protected under HIPAA regulations as well as C.G.S. 52-146(d), 52-146(e), and 52-146(f).
- 3) A court order for the release of these records is not one of the articulated exceptions under 52-146(f) and in Connecticut Supreme Court case Joseph Falco vs. Institute of Living – 254 Conn. 321 (2000)
6. Decisions of the presiding judge include:
  - a. Orders that WFH not release the medical record as requested in the Subpoena/Court Order.
  - b. Orders the patient/legal representative to sign an authorization to release the medical records to the court.
  - a. Orders the medical record to be submitted to the clerk of the court.
5. Preparation of Documents for Admission of Medical Record as Evidence by the Court
  - A. HIM copies the medical record or portion(s) of the medical record as specified in the Subpoena/Court Order.
  - B. The Director of Accreditation, Compliance and Performance Improvement certifies the copied documents to be a true copy of the original medical record. The certification includes:
    1. Name of patient;
    2. Date of birth;
    3. Master Patient Index (MPI) number;
    4. Docket number;
    5. The following statements:
 

*“The enclosed records are hereby certified to be true copies of medical records of the above-mentioned individual.*

*The records were made in the regular course of business of WFH, and it is the regular course of such business to make a record at the time of the transaction recorded therein or within a reasonable time thereafter.*

*These are being submitted to your care through action of the subpoena received at WFH and should be handled according to the requirements of State and Federal laws regarding confidentiality of patient records. Confidentiality of psychiatric, drug and/or alcohol abuse and HIV records is required by law and no information from such records may be transmitted to anyone else without written consent or authorization as provided for under Connecticut General Statutes, Chapter 899 and 368x; Sections 19a-126h, 19a-581 through 590, and Federal Regulations 42 CFR 2.*

*These confidential records and any/all copies should be returned to WFH as soon as they have served the purpose of the subpoena.”*
    6. The certification document is signed and dated by the Director of Accreditation, Compliance and Performance Improvement; and
    7. The certification document is notarized.
  - C. HIM staff place the medical record documents (copy) in a sealed envelope with a copy of the

subpoena and/or court order. A notice is taped to the envelope with the following information for the court:

1. **Date:**
2. **To:** The Clerk of the Court
3. **For:** Name and Address of Court
4. This envelope contains medical records of patient number: \_\_\_\_\_
5. Subpoenaed for the following date and time: \_\_\_\_\_  
\_\_\_\_\_
6. For use in the case of Docket Number: \_\_\_\_\_  
\_\_\_\_\_

**7. The following statements:**

***“These are true copies of medical records and may not be opened unless so ordered by the Court. Please return these records to WFH when they have served the purpose of the Court.”***

- D. The sealed envelope containing the copy of the medical record, certification documents and a copy of the original subpoena, court order and/or authorization if available, is delivered to the court.
- E. The Clerk of the court signs an acknowledgement of the receipt of the medical record(s) by signing a receipt that states:
  1. **To:** The Clerk of the Court
  2. Received from Whiting Forensic Hospital, an envelope containing Medical Records for use in Docket Number: \_\_\_\_\_.
  3. Clerk/Assistant Clerk signs, dates and records the time of acceptance of the envelope.
  4. The receipt is filed in the patient’s medical record with the original subpoena and/or court order.