

What is a subpoena?

A subpoena is a document usually issued by the clerk of courts in the name of the judge presiding over a case that commands the presence of a witness or production of documents. Additionally, Pennsylvania court rules permit lawyers to issue subpoenas in their capacity of officers of the court.

I am a case manager and have received a subpoena to produce client records for a deposition. I am concerned that if I do so, I will be violating my client's confidentiality. What should I do?

When you receive a subpoena, do not assume the worst. Your client may want you to answer the subpoena, for example, if he/she initiated a lawsuit in which his/her health is at issue. The first thing you should do is call your client. If your client agrees that you may release the information, get a signed release which should include the following:

- a. Your specific name or general designation;
- b. The name of the individual or organization to whom the disclosure is to be made;
- c. The name of your client;
- d. The purpose of the disclosure;
- e. How much and what kind of information is to be disclosed;
- f. The signature of your client;
- g. The date on which the consent is signed;
- h. A statement that the consent is subject to revocation anytime, except to the extent that you have already acted in reliance on it;
- i. The date, event, or condition upon which the consent will expire, if not earlier revoked;
- j. And this notice, "This information has been disclosed to you from records protected by Pennsylvania law. Pennsylvania law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or is authorized by the Confidentiality of HIV-Related Information Act. A general authorization for the release of medical or other information is not sufficient for this purpose." 35 P.S. § 7607(e).

A copy of a blank release is available by clicking [HERE](#).

What else do I need to know about a subpoena?

An attorney may not use subpoena power to find out general information for their client's future use. A subpoena commanding you to either attend and/or produce documents (or things) may only be for:

- 1) A trial or hearing in an action or proceeding pending in the court, or
- 2) The taking of a deposition in an action or proceeding pending in the court.

If the subpoena is for anything else, like an *ex parte* meeting with the attorney (that's a meeting with only the attorney and no deposition or court proceeding involved), you need not comply. Pa.R.C.P. No. 234.1.

What if my client does not want me to respond to the subpoena or I cannot get in touch with him/her?

Talk to your in-house attorney while considering the following:

The subpoena must be served properly, otherwise you need not comply. Proper service includes:

- 1) Original process-when a copy is handed to the person in charge of the place of business of the person to whom the subpoena is directed (or to the person or another adult member of the household if served to a residence);
- 2) By certified mail, return receipt requested;
- 3) Ordinary mail. BUT, if the subpoena is sent by ordinary mail, it must include 2 copies of the Notice and Acknowledgement and a self addressed stamped envelope. If you do not receive an acknowledgement form, IT IS NOT ENFORCEABLE. Pa.R.C.P. 234.2(b).

Can I get into trouble for not answering a subpoena?

Only if the subpoena is served properly. If it is and you ignore it, the court has the authority to order a bench warrant and find you in contempt. Pa. R.C.P. 234.5.

However, there is a difference between responding to a subpoena and disclosing information. If you respond by calling the attorney who issued the subpoena and say that you are not allowed to comment due to state confidentiality laws, you have responded without violating your client's confidentiality.

Can a court order me to answer a subpoena or disclose confidential information?

Yes. If a court orders you to respond to a subpoena, you must do so, even without a signed release.

Act 148 states that no court may issue an order to allow access to confidential HIV-related information unless the court finds that the person seeking the information has a "compelling need" which cannot be accommodated by other means. 35 P.S. § 7608(a)(1).

To determine compelling need, the court must weigh the need for disclosure against the privacy interest of the individual and the public interest which may be harmed by disclosure.

Compelling need can be hard to define in practical terms; however, in a 1997 Commonwealth Court of Pennsylvania case, an HIV positive subway passenger brought suit against SEPTA after he slipped and fell on a stairway at the subway station. The court quoted Section 7608(c) of the Confidentiality of HIV-Related Information Act to assess what determines compelling need, "the court shall weigh the need for disclosure against the privacy interest of the individual and the public interest which may be harmed by the disclosure." 35 P.S. § 7608(c). The court held that since the passenger brought suit that made his quality of life, loss of wages and medical condition relevant, SEPTA's interest in providing an adequate defense demonstrated a compelling need to disclose the HIV to the jury. Aiello v. Southeastern Pennsylvania Transportation Authority, 687 A.2d 399, 406-407 (Pa. Cmwlth. 1997). **What is a subpoena?**

A subpoena is a document usually issued by the clerk of courts in the name of the judge presiding over a case that commands the presence of a witness or production of documents. Additionally, Pennsylvania court rules permit lawyers to issue subpoenas in their capacity of officers of the court.

I am a case manager and have received a subpoena to produce client records for a deposition. I am concerned that if I do so, I will be violating my client's confidentiality. What should I do?

When you receive a subpoena, do not assume the worst. Your client may want you to answer the subpoena, for example, if he/she initiated a lawsuit in which his/her health is at issue. The first thing you should do is call your client. If your client agrees that you may release the information, get a signed release which should include the following:

- a. Your specific name or general designation;
- b. The name of the individual or organization to whom the disclosure is to be made;
- c. The name of your client;
- d. The purpose of the disclosure;
- e. How much and what kind of information is to be disclosed;
- f. The signature of your client;
- g. The date on which the consent is signed;
- h. A statement that the consent is subject to revocation anytime, except to the extent that you have already acted in reliance on it;
- i. The date, event, or condition upon which the consent will expire, if not earlier revoked;
- j. And this notice, "This information has been disclosed to you from records protected by Pennsylvania law. Pennsylvania law prohibits you from making any further disclosure of this information unless further disclosure is expressly permitted by the written consent of the person to whom it pertains or is authorized by the Confidentiality of HIV-Related Information Act. A general authorization for the release of medical or other information is not sufficient for this purpose." 35 P.S. § 7607(e).

A copy of a blank release is available by clicking [HERE](#).

What else do I need to know about a subpoena?

An attorney may not use subpoena power to find out general information for their client's future use. A subpoena commanding you to either attend and/or produce documents (or things) may only be for:

- 1) A trial or hearing in an action or proceeding pending in the court, or
 - 2) The taking of a deposition in an action or proceeding pending in the court.
- If the subpoena is for anything else, like an *ex parte* meeting with the attorney (that's a meeting with only the attorney and no deposition or court proceeding involved), you need not comply. Pa.R.C.P. No. 234.1.

What if my client does not want me to respond to the subpoena or I cannot get in touch with him/her?

Talk to your in-house attorney while considering the following:

The subpoena must be served properly, otherwise you need not comply. Proper service includes:

- 1) Original process-when a copy is handed to the person in charge of the place of business of the person to whom the subpoena is directed (or to the person or another adult member of the household if served to a residence);
- 2) By certified mail, return receipt requested;
- 3) Ordinary mail. BUT, if the subpoena is sent by ordinary mail, it must include 2 copies of the Notice and Acknowledgement and a self addressed stamped envelope. If you do not receive an acknowledgement form, IT IS NOT ENFORCEABLE. Pa.R.C.P. 234.2(b).

What if I do not have an in-house attorney?

There are several organizations that provide *pro bono* legal assistance to non-profit agencies in Philadelphia. They are:

[Philadelphia Law Works through Philadelphia VIP](#)

[Penn Law's Entrepreneurship Legal Clinic](#)

Temple University Beasley School of Law Center for Non-Profit Community Organizations

Additionally, you can contact your local bar association for contact information for private attorneys who may be willing to assist you.

Can I get into trouble for not answering a subpoena?

Only if the subpoena is served properly. If it is and you ignore it, the court has the authority to order a bench warrant and find you in contempt. Pa. R.C.P. 234.5.

However, there is a difference between responding to a subpoena and disclosing information. If you respond by calling the attorney who issued the subpoena and say

that you are not allowed to comment due to state confidentiality laws, you have responded without violating your client's confidentiality.

Can a court order me to answer a subpoena or disclose confidential information?

Yes. If a court orders you to respond to a subpoena, you must do so, even without a signed release.

Act 148 states that no court may issue an order to allow access to confidential HIV-related information unless the court finds that the person seeking the information has a "compelling need" which cannot be accommodated by other means. 35 P.S. § 7608(a)(1).

To determine compelling need, the court must weigh the need for disclosure against the privacy interest of the individual and the public interest which may be harmed by disclosure.

Compelling need can be hard to define in practical terms; however, in a 1997 Commonwealth Court of Pennsylvania case, an HIV positive subway passenger brought suit against SEPTA after he slipped and fell on a stairway at the subway station. The court quoted Section 7608(c) of the Confidentiality of HIV-Related Information Act to assess what determines compelling need, "the court shall weigh the need for disclosure against the privacy interest of the individual and the public interest which may be harmed by the disclosure." 35 P.S. § 7608(c). The court held that since the passenger brought suit that made his quality of life, loss of wages and medical condition relevant, SEPTA's interest in providing an adequate defense demonstrated a compelling need to disclose the HIV to the jury. Aiello v. Southeastern Pennsylvania Transportation Authority, 687 A.2d 399, 406-407 (Pa. Cmwlth. 1997).