

CBHS Policies and Procedures



City and County of San Francisco
Department of Public Health
Community Programs
COMMUNITY BEHAVIORAL HEALTH SERVICES

1380 Howard Street, 5th Floor
San Francisco, CA 94103
415.255-3400
FAX 415.255-3567

POLICY/PROCEDURE REGARDING: Release of Information Pursuant to a Subpoena/Court Order

Issued By: Jo Robinson, MFT

Director of Community Behavioral Health Services

Manual Number: 3.06-04

References: Consent Manual 2010

Date: January 18, 2011

Substantive revision. Replaces 3.06-04 of May 7, 1999

Purpose

The purpose of this policy is to provide guidance to staff for processing subpoenas and court orders for records that include mental health, substance abuse, or HIV test results.

Scope

This policy/procedure applies to all CBHS mental health civil service programs, CBHS contractors, and the Private Provider Network.

Policy

It is the policy of Community Behavioral Health Services (CBHS) to ensure that a client's mental health, and substance abuse, and HIV test results are information processed and released in a timely manner in accordance to laws governing the release of information pursuant to subpoenas and/or court orders.

Background

Mental Health Records

Mental health records may be disclosed to courts without client authorization only as necessary to the administration of justice. [Welfare & Institutions Code Sections 4514(f), 4515, and 5328(f)]. The release of mental health information or records may be made only directly to the court that issues the order. No release may be made upon the request or order of, not may records be delivered to, a notary, hearing officer, deposition officer, attorney, referee, administrative agency or other quasi judicial body. The Worker's Compensation Appeals Board is a "court" for the purposes of (LPS).

Substance Abuse Records

Substance abuse records are governed by federal regulations [42 C.F.R. Part 2]. Information protected by the substance abuse regulations may not be released in response to a subpoena or any other discovery mechanism, or even in response to a court order for discovery, unless the release has been specifically authorized by a separate court order that meets the requirements specified in the federal regulations [42 C.F.R. Section 2.13(a), 2.61-2.67].

I. Definitions

A. Court Order

A document signed by a judge of a court directing a specific action such as the disclosure of client protected health information.

B. Subpoena

A legal notice compelling a person to appear and testify at a deposition or trial (“testimony only”) or to produce records (“records only”).

C. Subpoena Duces Tecum

A legal notice compelling a person to appear and testify and to bring specified records or documents that are in his/her possession or control.

D. Proper Subpoena

A subpoena is considered valid/proper if it requires that the records be released directly to the court, unless the subpoena is also supported by either a court order or a valid written authorization.

*Note

Never ignore a subpoena/court order no matter how improper it may appear to be. Consult with HIM staff/program director/program manager/ legal counsel immediately. Noncompliance with a subpoena/court order may constitute a contempt of court and result in a bench warrant for your arrest and/or a fine.

When in doubt, CBHS program directors or managers should consult with HIM staff/City Attorney’s Office. Contract programs and PPN providers should consult with their own legal counsel.

II. Service of Subpoena/Court Order

All subpoenas/court orders must be delivered in person, except those for a criminal proceeding in a California court or for an administrative proceeding before a California state governmental agency.

A. Mental Health

a. Civil Service Programs

All subpoenas/court orders for mental health records must be served to the Health Information Management (HIM) staff at 1380 Howard Street. When HIM staff is not available, the Officer of the Day at BHAC located at 1380 Howard Street, 1st floor, would accept the subpoena or the court order on their behalf.

b. CBHS Contract Programs and the Private Provider Network

Subpoenas/Court Orders must be served at the program or provider’s site. When a contract program or provider has any question regarding a subpoena/court order, the program or provider should seek its own legal counsel. HIM staff provides only technical assistance.

III. Responses to Subpoenas

A. Mental Health Civil Service Programs

HIM staff is responsible for responding and processing subpoenas/court orders in accordance with applicable regulations.

- a. Log the date of receipt, the check amount, and actions using the HIM Access Program.
- b. Determine the validity of the subpoena/court order.
- c. Respond to subpoenaing parties regarding improper subpoenas/court orders.

-Improper subpoena

Respond to subpoenaing parties using the cover letter (Attachment A) with enclosures of an authorization form (Attachment C) and the court order form (Attachment D).

-Proper subpoena

Notify and coordinate with the program staff regarding proper subpoenas/court orders.

- d. Prepare medical records to court.
 - i. **Inner Envelope** with the following documents:
 - A photocopy of the subpoena/court order
 - A copy of the medical records
 - A letter to the judge of the issuing court (Attachment E).
 - Two blank copies of the “Order for Production of Mental Health Records”
 - Affidavit of Custodian of Medical Records to Accompany Copies of Records (Attachment G)
 - ii. **Labeling Inner Sealed Envelope**
 - Title of Action
 - Court Number
 - Department Number
 - Time of the Hearing
 - The name of the person signing the Declaration
 - iii. **Outer Envelope** – The sealed and labeled inner envelope is enclosed in an outer envelope. Label outer envelope with the following:
 - Clerk of the Court
 - Name of the Judge
 - Name of the issuing court
 - Address of the court
 - Attorneys listed on the subpoena

NOTE: Courts receive an enormous amount of documents. It is imperative that the envelope be labeled boldly and clearly.

- e. Client is not known to CBHS
If the client is not known to CBHS, send the subpoenaing party a “Certification of No Records” (Attachment H) as well as informing all parties named in the subpoena/court order.
- f. Client’s record has been purged and destroyed
Provide a “Certification of Record Destruction” (Attachment I).
- g. Record the disclosure in the “Accounting of Disclosure Log” (Attachment J)

B. Private Provider Network

- a. The provider is responsible for responding and processing subpoenas/court orders in accordance with applicable regulations. Subpoenas/Court Orders must be served at the provider’s site. If the provider has any question regarding a subpoena/court, the provider should seek its own legal counsel. HIM staff provides only technical assistance.
- b. Follow the procedures in Section III, A, a-g, if applicable.

C. Substance Abuse Programs

- a. The program is responsible for responding and processing subpoenas/court orders in accordance with applicable regulations. If the program has any question regarding a subpoena/court order, the program should seek its own legal counsel. HIM staff provides only technical assistance.
- b. Log the date of receipt, the check amount, and actions.
- c. Determine the validity of the subpoena/court order.
- d. Respond to subpoenaing parties regarding improper subpoenas/court orders.

Improper subpoena

- i. Respond to subpoenaing parties using the cover letter (Attachment B).

Proper court order

- ii. Prepare medical records to court.
- iii. Follow the procedures in Section III, A, d, i-iv, using (Attachment F-Letter to the Judge), (Attachment G-Affidavit of Custodian of Medical Records to Accompany Copies of Records), and (Attachment H – Court Order).
- e. Client is not known to CBHS
If the client is not known to CBHS, send the subpoenaing party a “Certification of No Records” (Attachment I) as well as informing all parties named in the subpoena/court order.
- f. Client’s record has been purged and destroyed

Provide a “Certification of Record Destruction” (Attachment J).

g. Record the disclosure in the “Accounting of Disclosure Log” (Attachment K).

IV. Response to a Subpoena with HIV Test Results as Part of the Medical Record

A separate statute [California Health and Safety Code 120975] prohibits the disclosure of the identity of an individual who has undergone a HIV test in any legal proceedings.

The staff is responsible for reviewing the medical record carefully to be sure that every mention of HIV test results has been removed from the record. The declaration should indicate that such information regarding the results of the HIV test has been removed, pursuant to California Health and Safety Code §§ 120975-120990.

If it is difficult to remove all mention of test results, the clinician should ask the client if he/she will provide a written authorization for the release of the test results.

V. Response to Subpoena/Court Order requiring a Staff to Appear and Testify in Court

Upon receipt of a subpoena/court order requiring a staff to appear and testify in court, HIM staff will notify the staff member immediately. If the staff member has any concerns regarding the subpoena/court order, consult legal counsel.

VI. Timeline for Responding to Subpoenas/Court Orders

Service of a subpoena/court order for a civil proceeding must be effected a sufficient time in advance to allow a reasonable time for locating the record and travel to the place indicated [California Code of Civil Procedure § 1987 (a); California Code of Civil Procedure §2020 (f)].

There is no precise definition of “reasonable time” in the law and the determination is case by case.

Proof of Notice to Patient

Federal and California laws ensure that medical records are not disclosed in legal proceedings without the client’s knowledge. These laws require the issuing attorney to either notify the client or the client’s legal representative that records are being sought and that the client has a right to object to such disclosure or to obtain a qualified protective order.

Time must elapse between:

- Notice to the client and the date of service of the subpoena [California Code of Civil Procedure § 1985.3 (b) (3)], i.e., 10 days when notice is mailed to client at California address.
- Notice to the client and the date for production [California Code of Civil Procedure § 1985.3 (b) (2)], i.e., 15 days when notice is mailed to client at California address.

VII. Fees

A. Criminal Cases

No automatic witness fee or mileage for state criminal proceedings [Penal Code § 1329]. It is appropriate to inquire about a fee for the mileage, but it cannot be demanded.

B. Civil Cases

CBHS employees called to appear via a subpoena or court order pursuant to his/her job duties will be reimbursed his/her normal rate of pay corresponding to the amount of time spent during the deposition or court appearance. Other expenses such as parking or bridge tolls will require filling out the "Field Expense Report".

The witness fee for non-civil service staff is \$35.00 per day and mileage is \$0.20 per mile for round trip traveled [California Evidence Code 1563 (c); California Code of Civil Procedure 1986.5; California Government Code 68093].

Attachments: 11

Contact Person: Manager, Health Information Management, 415-255-2488

Distribution:

CBHS Policies and Procedures are distributed by the Office of Quality Management for Community Programs

Administrative Manual Holders

CBHS Programs

SOC Managers

BOCC Program Managers

CDTA Program Managers

HIM Staff



**City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services**

**Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001**

Date:

(Address of issuing attorney)

Re:

DOB:

Case Number:

Dear Sir:

We have received a subpoena duces tecum for the above-named client on _____
Date

You have requested information from the records of the above-named client. We can neither confirm nor deny that the above-named client has been a client in our facility.

The Lanterman-Petris-Short Act permits us to furnish mental health records only "to the court as necessary to the administration of justice." (Welfare and Institutions Code Section 5328(f). We suggest that you do one of the following:

1. Obtain a court order compelling the release of the records. A sample of a court order is enclosed.
2. Obtain a written authorization from the client. An authorization is enclosed.

If we can be of further assistance, do not hesitate to call us.

Sincerely,

Custodian of Records

Enclosures: Court Order Form

Authorization for Use or Disclosure of Protected Health Information Form

cc: Attorneys for Other Parties



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

Date:

(Address of issuing attorney)

Re:

DOB:

Case Number:

Dear Sir:

We have received a subpoena duces tecum for the above-named person on _____
date

You have requested information from the records of the above-named client. We can neither confirm nor deny that the above-named client has been a client in our facility.

Information protected by the substance abuse regulations may not be released in response to a subpoena, unless the release has been specifically authorized by a separate court order that meets the requirements specified in the federal regulations [42 C.F.R. Sections 2.13(a), 2.61-2.67].

Thank you.

Sincerely,

Custodian of Records

cc: Attorneys for Other Parties



City and County of San Francisco
Department of Public Health
 COMMUNITY BEHAVIORAL HEALTH SERVICES

ATTACHMENT C AUTHORIZATION FOR USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION

Completion of this document authorizes the disclosure and/or use of individually identifiable health information, as set forth below, consistent with California and federal law concerning the privacy of such information. **Failure to provide all information marked with an asterisk(*) may invalidate this authorization.**

Name of Client*: _____ Date of Birth*: _____

I authorize* _____ to disclose health
 (Name, title, & address of person or organization)*

information obtained in the course of my diagnosis and treatment for the **purpose of:*** _____ and shall be limited to the following types of information – I recognize that if I am disclosing my health information to someone who is not legally required to keep it confidential, it may be redisclosed and may no longer be protected. California law requires that recipients refrain from redisclosing such information except with my written authorization or as specifically required by law.

- Discharge Summary
- Assessment
- Treatment Plan of Care
- Physician's Orders
- Progress Notes
- Other (Specify) _____
- Results of Lab Tests
- Results of Psychological or Vocational Testing
- Educational Assessment and Behavioral Reports (including school observation & educational testing)
- Substance Abuse Treatment

Send to*: _____
 (Name, title, & address of person or organization authorized to receive the information)

My Rights: I understand that authorizing the disclosure of this health information is voluntary. I may refuse to sign this authorization. I may revoke this authorization at any time. Revocation must be in writing, signed by me or on my behalf by someone with the legal authority to do so and delivered to CBHS or other facility. My revocation will be effective upon receipt, but will not be effective to the extent that CBHS may have acted in reliance upon this authorization prior to revocation. I have a right to obtain a copy of this authorization. I may not be denied treatment, payment, enrollment in a health plan, or eligibility for benefits if I refuse to sign.

Expiration*: This authorization will automatically expire in 90 days from the date of execution unless a different end date or event is specified: _____ or **immediately upon fulfillment.**
 (date/event)

* _____ * _____
 Date Signature (Client/Patient/Parent/Guardian/Conservator) Relationship if not Client/Patient

o Interpreter used _____

Witness (Required if Client/Patient unable to sign)

Notes:

- * A separate authorization is required to authorize the disclosure or use of **psychotherapy notes**. If this authorization is for the disclosure of **substance abuse** information, the recipient may be prohibited from disclosing the information under 42 C.F.R. part 2.



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 CITY AND COUNTY OF SAN FRANCISCO

	No.	
)	
vs.)	ORDER RE: PRODUCTION
)	OF MENTAL HEALTH RECORDS OF
)	
)	

It appearing to the Court that:

1. A subpoena duces tecum was served upon the Custodian of Records of the San Francisco Department of Public Health's Community Behavioral Health Services which seeks mental health information of _____.
2. The records sought contain information obtained in the course of providing mental health services to the patient which is subject to the disclosure restrictions of California Welfare & Institutions Code §5328.
3. Disclosure of the information contained in the records is necessary in the interest of justice to the proper adjudication and disposition of the pending matter.
4. Disclosure of the information can be effectively limited to the court, parties, and counsel in the case, so as to cause no substantial injury to the patient, to the psychotherapist/patient relationship, or to the treatment services.
5. The records do not contain information that is subject to the psychotherapist/patient privilege established by Evidence Code §1014 or to any other privilege. Alternatively, if such privilege exists, it has been waived.

GOOD CAUSE APPEARING THEREFORE, IT IS ORDERED THAT the Community Behavioral Health Services is directed to deliver to the Clerk of the Court a copy of the records with confidential information about other persons and confidential information about the patient from the patient's family members being redacted from the record. It is further ordered that the Clerk of the Court shall seal these records from public access except as to the parties and their attorneys. Any person obtaining copies of the records shall maintain their confidentiality and shall make no further disclosures except as provided by law or by order of this Court. Upon termination of these proceedings, including any appeal, the parties and their counsel shall destroy all copies of the records obtained pursuant to this order.

Dated: _____

 JUDGE OF THE SUPERIOR COURT



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

Date:

Honorable Judge
(Address of Court)

Re: _____ V. _____ (Case No.: _____)

Dear Honorable Judge:

The enclosed sealed envelope contains a copy of the records which has been subpoenaed in the above case.

In the absence of a written authorization from the client or the client's legal representative, California Welfare and Institutions Code §5328 (f) permits disclosure only pursuant to a direct order from the court. In deciding whether to issue the order, the court must determine whether the relevancy of the record to the proceedings outweighs any damage to confidentiality that disclosure will bring.

We are enclosing a court order form. We would appreciate receiving a copy for our records of any order that the court may eventually issue.

Thank you.

Sincerely,

Custodian of Medical Records

Enclosures: Subpoena
Copy of Records
Court Order Form

cc: Attorneys for Both Parties



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

Date:

Honorable Judge
(Address of Court)

Re: _____ V. _____ (Case No.: _____)

Dear Honorable Judge:

The enclosed sealed envelope contains a copy of the records which has been subpoenaed in the above case.

Said records contain substance abuse information and is protected under federal law [42 C.F.R. §2.3 et seq.]. In the absence of a written authorization from the patient or the patient's legal representative, these laws permit disclosure only pursuant to a direct order from the court [42 C.F.R. §2.61 et seq.]. In deciding whether to issue the order, the court must determine whether the relevancy of the record to the proceedings outweighs any damage to confidentiality that disclosure will bring.

We are enclosing a court order form. We would appreciate receiving a copy for our records of any order that the court may eventually issue.

Thank you.

Sincerely,

Custodian of Medical Records

Enclosures: Subpoena
Copy of Records
Court Order Form

cc: Attorneys for Both Parties



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

Affidavit of Custodian of Mental Health Records to Accompany Copies of Records

Required by Evidence Code Section 1561

I, _____, declare that:

1. I am the Custodian of Medical Records for the San Francisco Community Behavioral Health Services (CBHS) and have the authority to certify said records of CBHS.
2. The copy of the mental health records/substance abuse records attached to this affidavit is a true copy of all of the records described in the subpoena.
3. The records were prepared by the personnel of CBHS in the ordinary course of business at or near the time of the act, condition, or event.

I declare under penalty of perjury that the foregoing is true and correct.

Dated:

Custodian of Medical Records



City and County of San Francisco
 Department of Public Health
 Community Programs
 Community Behavioral Health Services

Office of Quality Management
 Health Information Management
 1380 Howard Street, Room 427
 San Francisco, CA 94103
 (415) 255-3488 Fax(415) 252-3001

Order for Production of Substance Abuse Records

Noncriminal Cases Only

SUPERIOR COURT OF THE STATE OF CALIFORNIA CITY AND COUNTY OF SAN FRANCISCO

In the Matter of the Petition of *

No. _____

ORDER RE: PRODUCTION OF SUBSTANCE ABUSE RECORDS OF

It appearing to the court that:

1. A valid subpoena duces tecum has been served on the custodian of records of San Francisco Community Health Services; and
2. Said subpoena seeks records relating to treatment for alcohol and/or drug abuse of the following patient*:
 _____; and
3. The custodian of records has produced said records for the court's preliminary review in camera; and
4. Said records contain information subject to the confidentiality requirements of 42 U.S.C. Section 290dd-2 and 42 C.F.R. part 2; and
5. Disclosure of the information contained in said records as described below is necessary in the interests of justice, and other ways of obtaining this information are not available or would not be effective; and
6. The public interest and need for disclosure outweigh the potential injury to the patient, the physician-patient and/or the psychotherapist-patient relationship, and the treatment services; and
7. The public interest will best be served by disclosure of said information; and

Said records contain no information that would be prohibited from disclosure by the physician-patient privilege, psychotherapist-patient privilege or any other privilege.

NOW, GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED THAT:

1. The custodian of records is to deliver to this court the drug/alcohol abuse records of* _____ for use only in these proceedings.



**City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services**

**Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001**

2. The following portions of said records contain information essential to fulfill the objectives of this order: _____.
3. Disclosure of the records identified in paragraph 2 (may/shall) be made to the following persons whose need for the information is the basis for this order:
_____.
4. The clerk of the court shall seal from public access such of the said records as may become part of this court's records, whether as evidence or otherwise.
5. Any person who obtains copies of the records disclosed pursuant to this order shall maintain their confidentiality and shall make no further disclosure except as provided by law or by order of this court.

Upon termination of these proceedings, including any appeal, the parties and their counsel shall destroy all copies of records and information pursuant to this order. Any original records shall be returned to San Francisco Community Behavioral Health Services.

Date: _____ Time: _____ AM/PM

Signature: _____
(judge)

Print
name: _____
(judge)

*Unless the records of this proceeding are ordered by the court to be sealed from the public scrutiny, references to the patient must use a fictitious name (e.g., John Doe or Jane Doe) and may not otherwise contain any patient-identifying information. [42 C.F.R. Section 2.64(a)]



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

CERTIFICATION OF NO RECORDS

The undersigned declarant is a duly authorized custodian of records for San Francisco Community Behavioral Health Services.

RE:

DOB:

Case Number:

with the authority to certify said records, and hereby certifies the following:

- a. That a thorough search has been made of all the records of the above mentioned organization, and upon completion of this search the records called for cannot be located.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____, at San Francisco, California.

Custodian of Records



City and County of San Francisco
Department of Public Health
Community Programs
Community Behavioral Health Services

Office of Quality Management
Health Information Management
1380 Howard Street, Room 427
San Francisco, CA 94103
(415) 255-3488 Fax(415) 252-3001

Certification of Record Destruction

Pursuant to Title 22, California Administration Code Section on record retention, all adult outpatient, day and residential treatment medical records must be preserved safely for a minimum of seven years following discharge of the patient, except that the records of unemancipated minors must be kept at least one year after such minor has reached the age of 18 years and, in any case, not less than seven years.

Purging of medical records for destruction may be done after the required retention time has lapsed.

The undersigned declarant is a duly authorized custodian of records for San Francisco Community Behavioral Health Services with the authority to certify said records, and hereby certifies the following:

The record(s) of client, _____ has/have attained the required retention period and has/have been purged and destroyed. I declare under penalty of perjury that the foregoing is true and correct.

Executed on, _____ at San Francisco, California

Custodian of Records



City and County of San Francisco
Department of Public Health
 COMMUNITY BEHAVIORAL HEALTH SERVICES

Accounting of Disclosures Log

Name: _____

BIS#: _____

RU#: _____

Client's Date of Birth: _____

Date of Disclosure	Name and Address of Requestor	Protected Health Information (PHI) Disclosed	Purpose of the Disclosure	Disclosed By (Name of the person who made the disclosure.)

Instructions:

- As of April 14, 2003, all providers are responsible for maintaining a log of disclosures.
- Providers have 60 calendar days to provide an accounting of disclosures (made in the six years prior to the date on which the accounting is requested) upon written request by patient/client/family/guardian.
- The DHHS privacy rule regarding accounting of disclosures may be found at 164.528 section of the following webpage:
http://www.access.gpo.gov/nara/cfr/waisidx_02/45cfr164_02.html

DISCLOSURES THAT DO NOT* NEED TO BE ACCOUNTED FOR:

1. Mandatory reports made to CPS and APS;
2. Authorized by client;
3. Made to the client;
4. To carry out treatment, payment and health care operations;
5. For national security or intelligence purposes.

ALL OTHER DISCLOSURES NOT LISTED ABOVE DO* NEED TO BE ACCOUNTED FOR ON THIS FORM.

* Please refer to DHHS language for further clarification or contact your Privacy Officer with questions.