

I. SAMPLE HIPPA LETTER TO MEDICAL PROVIDER

I am an attorney in [insert city] representing [insert client's name] who was treated at your hospital on or about [insert date]. At this time you shall consider yourself advised that my client does not waive and would specifically invoke the protections afforded by the provisions of HIPAA (45 CFR Parts 160 and 164, Health Insurance Portability & Accountability Act of 1996 (August 21), Public Law 104-191). You should already be aware that violation of the provisions of HIPAA can lead to possible fines of up to \$250,000 and imprisonment for up to 10 years for knowing misuse of individually identifiable health information.

Further, if any third party attempts to obtain these materials through the use of a subpoena, my client instructs this institution to object to the subpoena on the grounds that it violates the federal HIPAA regulations, inform my client of this request, and seek a protective order from the Court. If your hospital violates my client's HIPAA rights, my office will take all appropriate legal action against your hospital. If you have any further questions on this matter, feel free to contact me at your convenience.

REFERENCES

I.C. 16-39-3-1 et. seq (the court may order the release of a patient's mental health record without the patient's consent upon the finding, following a hearing and finding by the preponderance of the evidence that other reasonable means of obtaining the information do not exist and the need for disclosure outweigh the potential harm to the patient).

45 C.F.R. 164.512(e) (requirements for disclosure of records in the course of a judicial proceeding; requiring a written statement and accompanying documentation, along with the Court Order, demonstrating that the individual whose records are being sought was notified or attempted to be notified, and was given the opportunity to object).

45 C.F.R. 160.203 ("a standard, requirement or implementation specification adopted under this subchapter that is contrary to a provision of State law preempts the provision of State law"; providing for exceptions including that "the provision of State law relates to the privacy of individually identifiable health information and is more stringent than a standard, requirement, or implementation specification adopted under subpart E of part 164 of this subchapter.")

CASE LAW

Northwestern Mem'l Hosp. v. Ashcroft, 362 F.3d 923 (7th Cir. 2004) (Section 264 of HIPAA, 42 U.S.C. § 1320d-2 directs the Secretary of Health and Human Services to promulgate regulations to protect the privacy of medical records, but provides in subsection (c)(2) that such a regulation "shall not supersede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation." See also 45 C.F.R. § 160.203(b). A standard is "more stringent" if it "provides greater privacy protection for the individual who is the subject of the individually identifiable health information" than the standard in the regulation. § 160.202(6)).