

This policy is not necessarily current, but is posted as an example

Employees are to testify or produce records regarding any medical information within their possession with the following exceptions:

1. Information regarding drug/alcohol treatment (42 Code of Federal Regulations).
2. Mental health or developmental disability treatment (Welfare and Institutions Code Section 5328).
3. Information from Social Services Administration (20 CFR Part 401, 42 U.S. Code 1306).
4. Pupil Records from school districts (Education Code Section 49076).
5. California Children's Services records and any personal information obtained through CCS (Title 22 of California Administrative Code s41610-42801).
6. Multidisciplinary Child Abuse Team records and information from team meetings (Welfare & Institutions Code, Section 830).
7. Child abuse reports and names of reporters of child abuse. Contact Child Abuse Program Coordinator if this is an issue. Should be dealt with on a case-by-case basis.
8. Names and addresses of foster parents (Health & Safety Code 1536).
9. HIV Antibody test results.

California

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SUBJECT: Public Health Nursing Subpoenas

POLICY NUMBER: I. C. 3

DEPARTMENT: Health Department/PHNursing

DATE ISSUED: November 1991

APPROVED BY: Barbara A. Rieder
Barbara A. Rieder, RN, MS
Director, Public Health Nursing

DATE EFFECTIVE: December 1991

APPROVED BY: Joanne Hue
Joanne Hue
Deputy County Counsel

SUPERSEDES: I. C. 3 12/15/89
. Accountability Manual
Sect. 2.040 - 11/84
. Nursing Administration Manual
Sect. 2.15 - 5/78 & 11/81
. Public Health Bureau Manual
Section 305 - 11/10/81

ORIGINATED THROUGH: Nursing Administration

Location of policy: Administration Manual
Child Abuse Manual

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POLICY TITLE: Subpoenas to Produce records and/or Testify in Court

POLICY EFFECTS: All PHN Staff

POLICY STATEMENT:

Any Santa Clara County PHN employee who receives a subpoena shall respond to it according to designated procedure.

When a subpoena is received, all employees shall notify their supervisor and, if relevant, appropriate program coordinator.

The employee shall appear at the designated court and/or supply records at the appointed time. Note that if the employee cannot appear at the appointed time that the subpoena states, the employee may contact the attorney or person who issued the subpoena and see if he/she will agree to another time. (An employee may request to be on telephone stand-by.)

No one is to testify in court or produce records without a subpoena.

Employees are to testify or produce records regarding any medical information within their possession with the following exceptions:

1. Information regarding drug/alcohol treatment (42 Code of Federal Regulations)
2. Mental health or developmental disability treatment (Welfare and Institutions Code Section 5328)
3. Information from Social Services Administration (20 CFR Part 401, 42 U.S. Code 1306)
4. Pupil Records from school districts (Education Code Section 49076)
5. California Children's Services records and any personal information obtained through CCS (Title 22 of California Administrative Code §41610-42801).
6. Multidisciplinary Child Abuse Team records and information from team meetings (Welfare & Institutions Code, Section 830).

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- . **Accountability Manual**
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7. Child abuse reports and names of reporters of child abuse. Contact Child Abuse Program Coordinator if this is an issue. Should be dealt with on a case-by-case basis.
8. Names and addresses of foster parents (Health & Safety Code 1536).
9. HIV Antibody test results.

If requested records contain information that is covered by exceptions 1 through 8 that concern should be communicated to the Director of Nursing or her designee who will contact County Counsel's office as appropriate.

If HIV antibody results are in the record, the information is to be blocked out from records and excluded from testimony. No cover letter shall be sent nor the judge be notified regarding HIV status. If other information is to be excluded, the judge or attorney shall be so notified at the time of testimony or a cover letter (attached) shall be attached if the records are produced. This excluded information shall only be released upon order of a judge following the subpoenaing attorney making a motion to the judge or by the written consent of client or by parent/guardian of a minor.

If there is any question that the subpoena may be improper or question about the record, the County Counsel shall be consulted by the Program Coordinator or Director/Deputy Director of Public Health Nursing.

RATIONALE:

A subpoena is the legal process by which a witness is required to produce records and/or testify in court. A subpoena is a writ or order to appear and/or produce records. Disobedience of a subpoena may be punishable as contempt of court.

GENERAL INFORMATION:

The subpoena process incorporates notification of the subpoenaing attorney or party. If no information is received that the subpoena is being "quashed", respond to the subpoena at the designated court time or produce the records at the specified time. FOLLOW INSTRUCTIONS ON THE SUBPOENA CAREFULLY.

Types of Subpoenas:

1. Subpoena to Testify in Court (Personal Appearance Only).

This is a writ or order to appear directed to a person requiring court attendance at a particular time and place to testify as a witness.

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2. Subpoena for a Deposition

A subpoena for a Deposition is a writ or order directed to a person requiring attendance at a particular time and place to give a deposition.

A deposition is the process whereby an individual is directed to testify as a witness under oath in presence of a certified court reporter and the attorneys for both parties. The deposition can be taken at a place within the county where the action is pending and within 150 miles of the deponent's residence, unless the court orders otherwise (CCP 2025).

3. Subpoena to Testify in Court and Also to Produce Records (Subpoena to Appear and Subpoena Duces Tecum).

This is an order to appear as a witness and in addition to produce certain records at a particular time and location. An affidavit specifying the records to be produced must accompany the subpoena.

4. Subpoena to Produce Records (Subpoena Duces Tecum of Custodian of Records or Deposition Subpoena for Production of Business Records)

This is an order to produce certain records at a particular time and place. An affidavit specifying the records to be produced must accompany the subpoena.

Professionals Who Typically Subpoena Employees

Subpoenas are typically sent by the District Attorney, Probation Officers or Social Services Agency Social Workers. A subpoena may be sent by a private attorney or public defender.

Witness Fees and Mileage Reimbursement

Witness fees and mileage reimbursement are demanded only when the requesting party is a private attorney or one from out-of-county.

Method That Subpoenas Can Be Served

Usually the employee will be notified ahead of time that a subpoena is going to be served. Thus a mutual arrangement can be worked out as to when it is convenient for both parties for the subpoena to be delivered. Usually the subpoena will be served at the work location. However, as a courtesy, the employee may agree to go to court at an appointed time and be served with the subpoena at that time.

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Acceptance of a Subpoena

Acceptance of a subpoena is preferably done by the affected employee. When this is not possible, the supervisor, other professional staff, or clerical staff may accept the subpoena. If a person other than the subpoenaed witness actually accepts the subpoena for records/to appear, the person subpoenaed should be immediately notified.

PROCEDURE: Reviewing Subpoena & Preparing records

RESPONSIBILITY

ACTION

Employee Accepting
Subpoena

1. Review policy statement rationale and general information sections. Review subpoena and attachments. Make sure that when records are subpoenaed, a separate affidavit showing good cause for the production of records and specifying the exact matters or things desired to be produced, is attached.
2. Instruct clerical staff to collect witness and mileage fees only when the requesting party is a private attorney (See clerical fee schedule and procedures in clerical health manual). Issue receipt.
3. Notify in person the affected employee and supervisor immediately or ASAP.

Subpoenaed Employee
and Supervisor

4. Review Subpoena and any affidavit to determine who or what is being subpoenaed (i.e., person and/or record). If there are other concerns that it may be an improper subpoena, notify the Program Coordinator and/or Director/Deputy Director of Nursing who will consult with County Counsel if indicated.
5. Notify Child Abuse (CHAB) or other affected Program Coordinator by phone regarding details. Send xerox copy to employee's supervisor and program coordinator or Deputy Director.
6. File original Subpoena in client record.
7. If record is Subpoenaed, review and update record content.

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<u>RESPONSIBILITY</u>	<u>ACTION</u>
Subpoenaed Employee and Supervisor (continued)	8. Select for xeroxing only those records that are specifically asked for. Records that may need to be excluded (per page 1 and 2 of this policy statement) may not be producible based upon a subpoena alone. Refer to Nursing Administration questions regarding confidentiality issues. Information that is to be excluded is to be "blacked out" on a xeroxed copy. Since the writing shows through after the ink dries, xerox the "blacked out" copy as a final copy.
	9. Submit to clerical staff for xeroxing the specific documents that have been subpoenaed.
Clerical Staff	10. Xerox all documents submitted and place in a family folder format within time frame specified by requesting party.
	11. Return xeroxed copy and original to subpoenaed employee or supervisor.
Subpoenaed Employee or Supervisor	12. Check contents of xerox copy and send to appropriate Program Coordinator.
	13. Retain the original record in the district office, unless the affidavit specifically required the original. In the latter case, coordinate with the Child Abuse or other Program Coordinator regarding how to proceed. To maintain PHN Division chain of custody of records, original record may be shared but <u>not released</u> .
Program Coordinator, Director of Nursing/ Deputy Director	14. Reviews record to be sent to court, works with PHN and/or supervisor regarding any inappropriate inclusions and submits record to Director of Nursing or Deputy Director for final review. Maintains file of subpoenas.
Director of Nursing/ Deputy Director	15. Reviews record and returns record to program coordinator, employee or supervisor.
Director of Nursing/ Deputy Director, Program Coordinator	16. Calls County Counsel regarding how to proceed, if necessary.

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RESPONSIBILITY

ACTION

Supervisor, Director of Nursing/
Deputy Director, Program
Coordinator

17. If subpoena is just for records only, prepare records per procedure and mail by certified mail (see attached form) according to instructions on subpoena. Signs "Declaration (affidavit) of Custodian of Records" and mails with records. Retains two copies (one for subpoena file; one for family folder). If records have been excluded, prepare form cover letter (see attached) to be sent with records.

PROCEDURE: Court Testimony

Subpoenaed Employee

1. Review "You As a Witness" from the Practical Lawyer and "The Expert Witness", by Robert J. Masterson, Deputy District Attorney.
2. Do not take records to court unless it was subpoenaed. Make and take sufficient notes.
3. Request consultation with supervisor and/or Program Coordinator as needed.
4. Request person issuing subpoena that the subpoenaed individual be allowed to stay on telephone standby at office until time is certain.
5. Make arrangements with supervisor or Program Coordinator or another professional to attend court with employee as indicated.
6. At the date and time specified employee will report to the court waiting room, introduce him/herself to the bailiff, identify case for which subpoenaed, and follow any directions bailiff may give.
7. Be prepared to meet both parents and involved professionals in the court waiting room and the court room. Use judgement in discussing the case with other professionals prior to being called to testify. Do not discuss the case with attorneys and representatives for the non-subpoenaing party unless a written consent to do so has been obtained.

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RESPONSIBILITY

ACTION

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| Subpoenaed Employee (continued) | 8. | When notified by the bailiff that the case will be heard, proceed to the appropriate courtroom. After being called to the witness stand and sworn in, answer questions simply and directly. <u>If you do not know the answer to a question simply say so, do not guess.</u>

When asked for your address, give your work address, not your home address.

Feel comfortable during the court proceeding to ask the judge for clarification of any questions which are not perfectly clear. If you feel that you should not answer questions, ask the judge for his determination. |
| Program Coordinator | 9. | After court, seek post consultation with the supervisor and/or program coordinator as indicated. Destroy any xeroxed records if they are returned unless it is anticipated that they will be needed again. In this latter case maintain zeroxed record with original record. |
| Supervisor | 10. | Is available for consultation to employee and supervisor regarding what to expect in court etc.. Attends court with employee as indicated. Is available for post court testimony consultation. |
| Attachments: | 11. | Is available for consultation to employee regarding court testimony etc.. Confers with program coordinator as necessary or refers employee to her. Attends or make arrangements for someone to attend court with employee as indicated. Offers post court consultation. |
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| 1-3 | Subpoena (3 examples) | |
| 4-6 | Subpoena dues tecum (3 examples) and an affidavit | |
| 7. | "The Expert Witness" | |
| 8. | "You As a Witness" | |
| 9. | Certified Mail Sample | |
| 10. | Exclusion of Records Form Cover Letter | fb.subpoena |

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questions regarding this, please contact our legal representative:
Joanne Hue, Deputy County Counsel, Santa Clara County, County Counsel
Office (408) 299-2111.

Letter reviewed by Joanne Hue, Deputy County Counsel 12/91.

04/15/93
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