

Boundary Community Hospital

INSTRUCTIONS TO EMPLOYEE FOR RESPONDING TO A SUBPOENA

We understand that you have been subpoenaed to produce records or testify in a matter involving one or more of our patients. Boundary Community Hospital (BCH) seeks to cooperate with law enforcement to the extent it may do so without violating its obligations to its patients. However, state and federal laws limit the information that BCH and its employees may provide concerning their patients. This memo will answer questions that you might have concerning the subpoena and provide directions for your response.

What is a Subpoena? A subpoena is issued by the court clerk to a person in order to require the person to attend and testify at a deposition, hearing or trial and/or produce records as specified in the subpoena. The person to whom the subpoena is addressed must properly respond to the subpoena; otherwise, the person may be liable for contempt of court.

How does HIPAA affect Subpoenas? As you know, the HIPAA Privacy Rule¹ prevents health care providers from disclosing any information about a patient (including their name, condition, treatment, payment for health care, *etc.*) unless (1) the patient has executed a valid authorization that complies with HIPAA; or (2) a regulatory exception applies. Under HIPAA, a subpoena alone is not enough to overcome HIPAA's protection. Instead, to allow disclosure under HIPAA, the subpoena must be accompanied by either (1) a court order signed by the judge or magistrate, not the court clerk; or (2) written assurances from the party issuing the subpoena that they have notified the patient of the subpoena or that they have obtained a protective order.² If the subpoena is not accompanied by such an order or written assurances, you cannot disclose protected health information in response to the subpoena.

How do I respond to the Subpoena? If you have received a subpoena, you should respond as follows:

1. Immediately contact the CNO or CEO. Please forward the subpoena and any accompanying documents directly to the CNO, CEO or Designee as soon as possible so that they can work with you on the response. Also, please notify the CNO, CEO or Designee immediately if you are contacted by any outside entity to discuss the subpoena, your testimony, or records. Do not produce any records, provide any testimony (written or verbal), or disclose any protected health information pursuant to the subpoena unless otherwise directed by the CNO or CEO. If contacted by an outside entity, please refer the entity seeking the information to the CEO.

¹ "HIPAA" is short for the Health Insurance Portability and Accountability Act.

² See 45C.F.R. §164.512(e)-(f)

2. The CNO or CEO, will contact the party who issued the subpoena to explain HIPAA limitations and try to resolve the issues. You will be notified of the results. In the meantime, if you have concerns or questions about the status of the subpoena, or your response, please contact the CNO or CEO.
3. Unless the subpoena is withdrawn or otherwise resolved, you will need to appear at the hearing in response to the subpoena. If that is the case, you should do the following:
 - a. Contact the CNO or CEO two days before the hearing to determine the status of the case and discuss your response.
 - b. Call the court or the entity that issued the subpoena on the day before the hearing to determine if the hearing is still going forward. Most cases settle or are otherwise resolved before the hearing, so the odds are that you will not have to respond to the subpoena.
 - c. Unless the subpoena has been withdrawn or you are directed otherwise by the CNO or CEO, you would attend the hearing as directed in the subpoena.
 - d. Do not take or produce patient or BCH records pursuant to the subpoena. Only the BCH custodian of Medical Records may provide copies pursuant to the subpoena. Patient records belong to BCH, not to any individual employee. Any subpoena requesting records should be issued to BCH, not an individual employee. Accordingly, you are not authorized to take or produce records.
 - e. Unless the HIPAA issues have been resolved before the hearing, you will need to assert an objection based on HIPAA before you disclose any protected health information. This may sound intimidating, but it is really very easy and does not require any “lawyerly” response. Just do the following: Do not disclose any protected health information or records before you are called to the stand or otherwise ordered by the court to make the disclosure. When you are called to the stand and asked any question involving a patient or asked to turn over records, simply turn to the judge and say something like this:

“Your honor, the HIPAA privacy rules found at 45 C.F.R. § 164.501 prohibit me from disclosing protected health information unless you order me to disclose the information. Are you ordering me to disclose the information?”
4. The CNO or CEO, or a BCH representative will accompany you to the proceedings. If you have any questions or concerns, please discuss them with the CNO or CEO prior to the proceedings.

We appreciate your cooperation and assistance in helping us comply with our obligations and preserving the confidentiality of our patient’s health information.