

NOTE: This sample letter may be issued in response to a subpoena or other request for protected health information that does not comply with the HIPAA privacy rules. It should be reviewed and revised to fit the circumstances and any additional requirements of state or federal law.

SAMPLE RESPONSE TO REQUEST FOR PROTECTED HEALTH INFORMATION

Re: *Request for Disclosure of Protected Health Information*

Dear _____:

We have received your request for protected health information concerning [PATIENT]. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and accompanying regulations, 45 CFR § 164.501 *et seq.*, prohibit PROVIDER from disclosing such information unless a regulatory exception exists; violations may result in significant civil and potentially criminal penalties. Accordingly, PROVIDER will need one of the following before it may disclose the records or other information:

1. A valid **authorization** signed by the person whose protected health information you seek. The authorization must comply with the requirements of 45 CFR § 164.508. For your convenience, I enclose a copy of our HIPAA-compliant authorization.
2. A valid **court order** or **warrant** signed by the judge, magistrate, or administrative tribunal with jurisdiction over PROVIDER, or a **grand jury subpoena** issued from a court with jurisdiction over PROVIDER. (45 CFR § 164.512(e)(1)(i), (f)(1)(ii))
3. A valid **subpoena**, discovery request, or other lawful process issued from a court or administrative tribunal with jurisdiction over PROVIDER. (45 CFR 164.512(e)(1)(ii)). A subpoena that is not accompanied by a court order must be accompanied by written documentation confirming one of the following:
 - a. That you have made a good faith attempt to provide **written notice to the person** who is the subject of the disclosure in enough time and with sufficient information to allow the person to object to the request, and either the person failed to object or the court or administrative tribunal has ruled that the information should be disclosed (45 CFR § 164.512(e)(1)(iii)); or
 - b. That the parties have stipulated to or that you have obtained a **protective order** that prohibits the parties from using or disclosing the protected health information for any purpose other than the pending litigation or proceeding, and requires the parties to return or destroy all copies of the protected health information at the end of the litigation or proceeding. (45 CFR 164.512(e)(1)(iv)).
3. A **request by the person** who is the subject of the disclosure to access their own records. (45 CFR § 164.524). We can then provide the records to the person and the person can distribute them as they choose.
4. Confirmation and evidence that the disclosure falls within one of the **other exceptions** contained in the HIPAA privacy rules, 45 CFR §§ 164.506-.512).

Please note that we can only disclose the information specifically identified in the authorization, order, subpoena or warrant. Also, please note that we will require payment for the records before the records are released. Finally, we reserve the right to deny any request to the extent that disclosure is not required by relevant law.

[For use if a subpoena has been issued]. We note that the subpoena requires us to respond by ***[Date]***. Please let me know immediately whether you will voluntarily withdraw the subpoena, or whether we will need to move to quash the subpoena based on HIPAA. If we are forced to quash the subpoena, we will seek our costs and legal fees incurred since you have now been put on notice of the requirements contained in HIPAA.

Please contact me if you would like to discuss the issues further.

Respectfully,