

HEALTHWEST

Policy and Procedure

No. 04-005

Prepared by:

Effective: February 1, 1991

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The Office of Recipient Rights

Approved by:

Subject: Responding to Subpoenas

Julia Rupp, Executive Director

I. POLICY:

It is the policy of HealthWest that staff will respond to subpoenas in a manner that will protect recipient confidentiality in compliance with the Michigan Mental Health Code and Administrative Rules.

II. PURPOSE

To give staff clear direction in responding to subpoenas for appearance to give testimony or to produce recipient records.

III. APPLICATION

All HealthWest staff, contract staff, and volunteers who may be called upon to testify or produce documents related to confidential client information.

IV. DEFINITIONS/BACKGROUND INFORMATION

- A. This policy is written in compliance with the Michigan Mental Health Code, Administrative Rules, and Corporate Counsel.
- B. Privileged Communication: Means a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a recipient, or to other persons while they are participating in the examination, diagnosis, or treatment.

V. PROCEDURE

- A. Staff receiving a subpoena shall immediately inform their supervisor and the Recipient Rights Officer.
- B. The originator of the subpoena shall be informed by the responsible worker that the requested information is made privileged by Section 750(1)(c) of the Mental Health Code (see exceptions below) and may not be disclosed without proper authorization.

- C. Proper authorization:
 - 1. A valid consent executed by the recipient; or
 - 2. An order from the presiding judge/court after hearing testimony on the privileged nature of the information.

- D. In consultation with Administration and Recipient Rights, the person(s) receiving the subpoena shall disclose privileged communications upon request:
 - 1. When the privileged communication is relevant to a physical or mental condition of the recipient which the recipient has introduced as an element of his or her claim or defense in a civil or administrative case or proceeding which, after the death of the recipient, has been introduced as an element of his or her claim or defense by a party to a civil or administrative case or proceeding.
 - 2. When the privileged communication is relevant to a matter under consideration in a commitment proceeding, but only if the recipient was informed that any communications could be used in the proceeding.
 - 3. When the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the recipient or his or her need for a guardian, but only if the recipient was informed that any communications made could be used in such a proceeding.
 - 4. In actions, civil or criminal, against the psychiatrist or psychologist for malpractice.
 - 5. When the communications were made during an examination ordered by a court, prior to which the recipient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.
 - 6. When the communications were made during treatment which the recipient was ordered to undergo to render him or her competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the recipient to stand trial.
 - 7. When other law supersedes the Mental Health Code, such as staff's requirements under Public Acts 519, 21, and 372, to report their knowledge of suspected abuse or neglect of adult and minor recipients of service.

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