

**HEALTH DATA**

surgery 0  
clinical test  
medications  
blood pressure  
lab test 52%  
vaccination 82%  
BMI normal

10-may-14



patient #08001

# YOU'VE BEEN SUBPOENAED!

## A Checklist for Responding to Attorney-Issued Medical Record Subpoenas Without Violating HIPAA

**By Elizabeth P. McCullough**

1. Review the subpoena. Is your patient a party (plaintiff or defendant)?
  - ✓ If no, and the patient is not a minor/incompetent, either move to quash the subpoena or request a Court order before producing the medical records.
  - ✓ If no, and the patient is a minor/incompetent, then check to ensure that the party requesting the records has signed a valid HIPAA authorization. If the party has signed a valid HIPAA authorization, go to No. 2 below. If the party has not signed a valid HIPAA authorization, you will either need to obtain an authorization, produce the records to the Court under seal, or move to quash the subpoena.
  - ✓ If yes, move to No. 2.
2. Was the subpoena served on the patient (is there a cover letter and/or certificate of service that indicates that the patient has been provided a copy of the subpoena)?
  - ✓ If no, you will either need to obtain the patient's authorization/consent or you need to move to quash the subpoena.
  - ✓ If there is no cover letter and/or certificate of service, call the attorney who sent the subpoena and ask and then obtain the response in writing.
  - ✓ If yes, move to No. 3.
3. Has 10 days elapsed since the subpoena was served on the patient?
  - ✓ If no, contact the patient (or his/her attorney) and obtain in writing confirmation that the patient does not intend to file a motion to quash, OR
  - ✓ Wait 10 days before producing the medical records.
  - ✓ If yes, produce the records.

*For questions, unusual circumstances or for assistance, contact your liability insurance carrier or your attorney!*



Elizabeth McCullough is a litigation attorney and leader of Young Moore's Health Care Industry Group. She advises and defends health care providers in matters involving patient care issues. She has successfully handled numerous medical malpractice cases, many of which involved catastrophic injury or death. Elizabeth has represented clients before the North Carolina Medical Board, the Board of Nursing, and the Board of Social Work Certification and Licensure. Additionally, Elizabeth educates clients and represents them in matters pertaining to HIPAA, HITECH and other security issues. She has successfully handled appeals in the North Carolina Court of Appeals, North Carolina Supreme Court, Virginia Supreme Court, United States Court of Appeals for the Fourth Circuit and the United States Supreme Court.

Contact Elizabeth:  
(D) 919-861-5071  
epm@youngmoorelaw.com