

Court Order to Disclose Confidential Information

Health Information—HIPAA Privacy Rule, 45 C.F.R 164.512(c)—A covered entity may disclose protected health information in response to an order of a court, provided that it discloses only the information expressly authorized by the order.

Mental Health, Developmental Disabilities, and Substance Abuse Services—G.S. 122C-54(a)—A facility shall disclose confidential information if a court of competent jurisdiction issue an order compelling disclosure.

AIDS Virus Infection and Reportable Communicable Disease—G.S. 130A-143—Information shall not be released unless release is made pursuant to a subpoena or court order. Upon request of the person identified in the record, the record shall be reviewed in camera. In the trial, the trial judge may, during the taking of testimony concerning such information, exclude from the courtroom all persons except the officers of the court, the parties and those engaged in the trial of the case.

Treatment Relationships with Certain Professionals—G.S. 8-53 et. seq. —Any resident or presiding judge in the district . . . may . . . compel disclosure if in his opinion *disclosure is necessary to a proper administration of justice*. If the case is in district court the judge shall be a district court judge, and if the case is in superior court the judge shall be a superior court judge.

State v. Efid, 309 N.C. 802, 309 S.E.2d 228 (1983). The statute affords the trial judge wide discretion in determining what is necessary for the proper administration of justice. Flora v. Hamilton, 81 F.R.D 576 (M.D.N.C 1978). Judges should not hesitate where it appears to them that *disclosure is necessary in order that the truth be known and justice done*.

Substance Abuse Treatment Records—42 C.F.R. §§ 2.64, 2.65—the court may order disclosure only if the court finds that good cause exists. To make this determination, the court must find that:

Civil cases

1. Other ways of obtaining the information are not available or would not be effective, and
2. The public interest and need for disclosure outweigh the potential injury to the patient, the physician-patient's relationship, and the program's treatment services.

The court must also:

- (a) Limit disclosure to those persons whose need for information is the basis for the order,
- (b) Limit disclosure to those parts of the record that are essential to fulfill the objective of the order, and
- (c) Include such other measures as are necessary to limit the disclosure for the protection of the patient, the physician-patient relationship and the treatment services; for example, sealing from public scrutiny the record of any proceeding for which disclosure of a patient's record has been ordered.

Criminal cases—in addition to 1. and 2., above, the court must find:

3. The crime involved is extremely serious, such as one that causes or directly threatens loss of life or serious bodily injury including homicide, rape, kidnapping, armed robbery, assault w/deadly weapon, and child abuse and neglect
4. There is a reasonable likelihood that the records will disclose information of substantial value in the investigation or prosecution
5. Person holding records has been afforded an opportunity to be represented by independent counsel.

The court must also:

- (a) Limit disclosure and use to parts of the patient's record which are essential to fulfill the objective of the order,
- (b) Limit disclosure to those law enforcement and prosecutorial officials who are responsible for the investigation or prosecution and limit their use of the records to investigation or prosecution of the extremely serious crime or suspected crime specified in the application for court order, and
- (c) Include such other measures as are necessary to limit the disclosure and use to the fulfillment of only that public interest and need found by the court.