**Section 1285.265 Subpoena Process of Medical and Hospital Records**

a) Upon a showing by the Division that probable cause exists that a violation of one or more of the grounds for discipline listed in Section 22 of the Act has occurred or is occurring, the Medical Board may subpoena the medical and hospital records of individual patients of any physician licensed under the Act. Probable cause exists upon a showing that there is a reasonable basis for believing that a violation has occurred or is occurring.

1) A request for subpoena of individual medical and hospital records from a Department prosecutor, investigator, or other appropriate staff shall:

A) Be in writing;

B) Be signed by the Medical Coordinator or Deputy Medical Coordinator;

C) Allege one or more grounds for discipline under the Act;

D) Identify with reasonable specificity the records requested; and

E) Include an affidavit of a person having knowledge of facts upon which the request is based.

2) A request for subpoena of individual medical or hospital records received by the Chief Administrative Law Judge, or another Administrative law Judge designated by the Chief, by any Respondent or Petitioner shall:

A) Be in writing;

B) Set forth facts to demonstrate that the documents or testimony sought are relevant to the issues contained in the Complaint, Notice of Intent to Deny, Notice of Intent to Refuse to Renew, or Petition pending before the Division and are not otherwise excludable by law or by rule;

C) Identify with reasonable specificity the records requested; and

D) Include an affidavit of a person having knowledge of facts upon which the request is based.

3) Upon receipt of a request for a subpoena under a subsection (a)(2), the Chief Administrative Law Judge, or another Administrative Law Judge designated by the Chief, shall transfer the request to the Medical Board for the Medical Board's consideration. The Chief Administrative Law Judge, or another Administrative Law Judge designated by the Chief, shall opine on the relevancy of the requested records in writing to the Medical Board. The Medical Board shall determine whether to issue the subpoena within 45 days after receipt of the request.

4) A subpoena for individual medical and hospital records shall:

A) Be served during reasonable business hours;

B) Require that, prior to the submission of such records to the Medical Board, adequate steps are taken to safeguard the confidentiality of individual patients by removing any information that would indicate the identity of individual patients and by encoding the records for use only by authorized persons;

C) Direct that an inventory of all records produced, and a copy of encoding information be left with the caretaker of the records; and

D) Provide a compliance date of 30 days to produce the subpoenaed records or another date specified in the subpoena.

b) The Division or Medical Board may, pursuant to Section 23 of the Act, subpoena copies of hospital and medical records in mandatory report cases filed with the Division pursuant to Section 22(A)(34), (35) and (36) and Section 23 of the Act when the patient or legal representative has failed to provide written consent to the Division to obtain copies of the hospital and medical records and the mandatory report alleges death or permanent bodily injury. Permanent bodily injury is defined as a bodily injury that causes serious disfigurement or protracted loss or impairment of the function of any bodily member or organ that, according to every reasonable probability, will continue throughout the remainder of one's life.

1) The request for subpoena shall:

A) Be in writing;

B) Be signed by the Medical Coordinator or Deputy Medical Coordinator;

C) State that the mandatory report alleges death or permanent bodily injury;

D) Identify with reasonable specificity the records requested; and

E) Include an affidavit that the patient or legal representative would not consent to release records.

2) The subpoena shall:

A) Be served during reasonable business hours;

B) Require that, prior to the submission of such records to the Medical Board, adequate steps are taken to safeguard the confidentiality of individual patients by removing any information that would indicate the identity of individual patients and by encoding the records for use only by authorized persons;

C) Direct that an inventory of all records produced, and a copy of encoding information be left with the caretaker of the records; and

D) Provide a compliance date of 30 days to produce the subpoenaed records or another date specified in the subpoena.

(Source: Amended at 48 Ill. Reg. 18129, effective December 13, 2024)