

ENKI Health & Research Systems, Inc.

INSTRUCTIONS FOR RESPONDING TO SUBPOENAS

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INTRODUCTION TO SUBPOENAS

WHAT IS A SUBPOENA?

Subpoena for Records

- A request from a third party to produce client records.
- A request from a third party to produce billing records.
- A request from a third party to produce employee records.

Subpoena for Personal Appearance

- A demand to appear for a deposition about the client.
- A demand to appear in court to testify concerning the client.

WHAT IS A SUBPOENA *NOT*?

- Written consent from the *client* to release records.
- Written consent from the *client* to testify about the client's condition.
- A Court Order from a *Judge* to release information about the client.
- A request from the *client* to release information about the client – maybe no, maybe yes.

TYPES OF SUBPOENAS

- Deposition subpoena for production of documents
- Deposition subpoena for personal appearance
- Civil subpoena [to appear at trial]
- Civil subpoena duces tecum [to appear and produce documents at trial]

OTHER COMMON TYPES OF REQUESTS

- Written Authorization to Release Records from the client.
- Social Security Administration Appeals. [Must provide one free copy of records.]
- Coroner's Office request for records in connection with an investigation.

INTRODUCTION TO CLIENT/THERAPIST PRIVILEGE

WHAT IS THE PSYCHOTHERAPIST – PATIENT PRIVILEGE?

- The client has a right to refuse to disclose a confidential communication between the client and the psychotherapist.
- The client can prevent another person from disclosing a confidential communication between the client and the psychotherapist.

Cal. Evidence Code Section 1014.

WHO IS THE HOLDER OF THE PRIVILEGE?

- The patient
- The patient's guardian or conservator
- If the patient is deceased, the personal representative appointed by the court

Cal. Evidence Code Sec. 1013.

WHO CAN CLAIM THE PRIVILEGE?

- The patient, guardian, conservator or personal representative.
- A person authorized to claim the privilege by the patient [e.g. His/her attorney]
- The psychotherapist, unless instructed by the client to permit disclosure

HOW DOES THE CLIENT WAIVE THE PRIVILEGE?

- The holder of the privilege consents to disclosure.
- The psychotherapist can assert the privilege – even if the patient waives the privilege.
- A release of information to another that is reasonably necessary to accomplish the purpose for which the psychotherapist is retained does *not* constitute a waiver of the privilege

Cal. Evidence Code Sec. 912.

MORE ABOUT SUBPOENAS

PROPER SERVICE OF A SUBPOENA

An employee of Enki or Enki's agent (counsel) for service of process must be served at least **10** days in advance, if personally served. Service must be **15 days** in advance, if served by mail. In either case, with **both** the subpoena and the notice to consumer.

WHEN IS A RELEASE SUFFICIENT?

- Must be in writing.
- Must be specific to Enki and include specific records to be released (e.g. medical records, psych records etc.)
- Must have the client's/guardian's original signature.
- Should be no more than twelve (12) months old.

WHAT TO DO WHEN A SUBPOENA FOR RECORDS IS RECEIVED

If it is a personal subpoena

- It has a person's name and not a clinic name
- Accept the subpoena but give the process server a "Courtesy Acceptance" card
- Do **not** have the named person come out to receive the subpoena
- Notify Clinic Manager and your supervisor
- Log receipt of the subpoena
- Fax immediately to counsel at 866-275-1892
- Counsel will respond within 72 hours. If not, notify Corp. office within 24 hours.

<p>A subpoena for service on</p> <hr/> <p>(Print Person's name that is being served)</p> <p>was received by ENKI Health & Research Systems, Inc. as a courtesy.</p> <p>This does not constitute legal service. Please contact Cynthia Maher, J.D. at (714)501-3334 to confirm whether or not service has been accepted.</p>

If it is a company subpoena

- Notify Clinic Manager and your supervisor
- Log receipt of the subpoena
- Review subpoena against check list and attach to the subpoena
- If everything is OK from checklist fax to counsel at 866-275-1892. You will hear back within 72 hours. If not, notify Corp. office within 24 hours.
- If anything is not correct from the checklist then complete the Subpoena Return form letter and send to requesting attorney and attach a copy to the subpoena

WHICH, IF ANY, RECORDS SHOULD BE RELEASED?

- The treatment team needs to review and determine which records are appropriate to release.
- Corporate counsel must always be consulted before documents are released.
- Client should be given a copy of the subpoena and the date by which any objection to production should be raised, if possible.
- Billing records may not be released without corporate office approval.

RESPONDING TO A SUBPOENA FOR PERSONAL APPEARANCE

- Clinic manager & corporate counsel must be notified immediately if any staff is served with a subpoena to appear either in court or at a deposition to testify.
- Expert testimony requires advance payment of an expert witness fee. [\$300.00/hour for licensed/certified staff and \$150.00/hour for other staff]
- For non-expert testimony, a \$35.00 flat fee is required. Non-expert testimony consists of reading the records; interpretation or expansion is not allowed.

RETRIEVAL AND COPY CHARGES FOR RECORDS

\$.10 per page for copies.

\$ 24.00/hr for clerical time to pull/review records.

\$ 24.00/hr for clinician time to review records.

\$ 125.00/hr for MD time to review records.

General Notes About Responding to Subpoenas

- The reason why is not necessary
- Any release/ subpoena request is only valid for one year
- The name of the clinic needs to be on the release not the name of the therapist, doctor, or mental health worker. A release with a person's name on it will be considered invalid.
- The release needs to indicate that they are requesting Mental Health records or Psychiatric records. Not medical notes or doctors notes.

- Transfer or release to another mental health clinic that is part of LA-DMH is not a problem.

- When a client is in the emergency room etc. and a call is made to their Enki physician by another physician:
 - The Physician can release the medication log if this is pertinent to the treatment the client will be receiving in the emergency room.

- If someone comes to the clinic asking for you stating to the receptionist that they just need to give you some documents, that you need to sign for, it may be a process server. Receptionist can give them Cynthia's number and security can have them escorted off the premises.

- What is approved for release: The treatment team needs to review the records before releasing any records.
 - Intake (disposition screening)
 - Assessment and Addendums
 - Initial Psychiatric Evaluation and re-assessments
 - Medication Log
 - Change of Diagnosis

- What never gets released:
 - Billing records
 - Progress notes

- When a client requests to review their records:
 - The treatment team needs to review the records. The client must be given the opportunity to review the records within 24 hours of the request. Only review with treatment team present.

- When a client requests to have copies of their records:
 - Treatment team needs to review the records within 24 hours of the request.
 - Assessment
 - Medication log
 - Disposition Screening.
 - The treatment team can always determine if something will be detrimental to the client.

WHEN IN DOUBT, FAX THE SUBPOENA THEN CALL ENKI'S ATTORNEY

**Cynthia Maher, J.D.
714-501-3334 cell
866-275-1892 fax**

You should receive a response within 72 hours.
If not, notify the corporate office within 24 hours.

ENKI Health & Research Systems, Inc.

INSTRUCTIONS FOR RESPONDING TO SUBPOENAS

APPENDIX A

SUBPOENA POLICY & PROCEDURES AND SAMPLE FORMS

ENKI HEALTH & RESEARCH SYSTEMS, INC.
CLINIC POLICIES & PROCEDURES

Subject: Processing of Subpoenas	Section number & Section Title: 2000 – Medical Records		Policy Number: C-2020
Approval:	Supersedes: C-2015 DATED 05/19/08 & C-2020 DATED 11/10/05	Effective Date: 06/04/09	Page: 9 of 13

Policy: EHRS accepts service of all subpoenas at any of its sites. Subpoenas addressed to EHRS, Custodian of Records for EHRS or the clinic name are accepted unconditionally. Personal subpoenas (subpoenas addressed to a person, not the company or clinic) are accepted only as a courtesy. (see 1.0 below)

Procedure:

- 1.0 When a subpoena for a staff or personal appearance is served at the clinic, inform the process server that he/she can leave the documents.
 - 1.1 Do not call the staff member to accept the subpoena.
 - 1.2 Inform the process server that they should not consider the person to have been served.
 - 1.3 Give the process server the business card indicating the subpoena was received as a courtesy and to contact EHRS legal counsel.
 - 1.4 Do not give the process server the EHRS Counsel’s address.
 - 1.5 Inform your supervisor and the Clinic Manager of the subpoena.

- 2.0 When a subpoena is received, addressed to EHRS, Custodian of Records for EHRS, or the clinic name the subpoena must be processed through EHRS Counsel and records cannot be released until reviewed and approved by the appropriate staff.
 - 2.1 Inform your supervisor and the Clinic Manager of the subpoena.

- 3.0 Only legally required information will be released.

- 4.0 Log in any subpoenas received.
 - 4.1 When a subpoena for records is received the Medical Records clerk must attach the checklist to the back of the subpoena.
 - 4.2 The clerk then must go through the entire checklist.
 - 4.3 If any item is not correct, the Medical Records clerk must complete a return Subpoena letter and return the subpoena to the sending party. Legal counsel should not be contacted.
 - 4.4 The checklist must be filed as procedures indicate.

- 5.0 If all items on the checklist are correct then fax the subpoena to legal counsel, for instructions on how to follow up. Make sure the fax is stamped CONFIDENTIAL.
 - 5.1 Call legal counsel’s after faxing to make sure the subpoena was received.
 - 5.2 If no response within 72 hours make sure to call and remind legal counsel we are waiting for a response.
 - 5.3 Counsel approval is needed prior to the release of any information.
 - 5.4 Procedures to review records can continue while the subpoena is being reviewed by counsel.

ENKI HEALTH & RESEARCH SYSTEMS, INC.
CLINIC POLICIES & PROCEDURES

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- 6.0 Medical Records Clerk must notify the treatment team/SFPR that client’s records are being subpoenaed.
- 7.0 Treatment team, in consultation with legal counsel, will identify the portions of medical records that can be released.
- 8.0 When record is ready to be copied, copy indicated section(s) of record with the exception of correspondence and prescriptions.
- 9.0 EHRS charges fees for handling subpoenas for records. All charges must be paid before the requesting party receives the records. If they do not pay the full amount do not release the records until such time as they pay the charges.
- 10.0 EHRS will charge for time and copying records for any subpoena in accordance with state law. For current rates and examples please refer to the EHRS Subpoena fees document (ADM-138).

ENKI Health & Research Systems - Subpoena For Records Checklist

Client: _____ Date Received Subpoena: _____

IS / SS#: _____ SFPR/ MD: _____

When a Subpoena for records is received go thru this checklist to ensure that everything is correct prior to submitting the Subpoena to Enki Counsel.

- Correct Name of the Clinic.**
 - *Reminder - records are held by the Clinic, no one staff member is the holder of such records. The subpoena must clearly indicate the correct name of the clinic.*
- Client indicated cannot be located.**
 - *If the subpoena only has the client's name and it is a common name, you can call the lawyers office request a Social Security number and/ or Date of Birth. If no response, send Subpoena back with a Subpoena Return Letter stating the clinic is unable to locate the records.*
- Name of the person or entity to whom the records are to be released is stated.**
 - *If the subpoena does not clearly indicate to whom the records are being released, you can return the subpoena.*
- Date subpoena signed complies with regulations/law.**
 - *Is there a signature date? All release for records are only valid for one year. Per HIPAA regulations the date must clearly indicate a specific expiration date. The expiration date cannot be "one year from date of signature".*
 - *Check the date the subpoena was served. Is the production date at least 15 days from the date of receipt by the clinic? If not you should return the subpoena.*
- The type of records sought includes Mental Health, Psychotherapy, or Psychiatric records**
 - *All requests for records must clearly indicate one of the above, "Medical Records" is not acceptable.*
- Civil Subpoena only:**
 - *A Notice to Consumer must be attached if the subpoena is served by the opposing counsel.*
 - *A Notice to Consumer is **not** necessary when the client's counsel is serving the subpoena.*
- Proof of Service is attached showing proof either client or client's Attorney was notified of request for records.**
 - *If the Proof of Service does not clearly indicate the name of the client or their attorney refer this subpoena to Enki Counsel.*
- If all the above is correct you are now ready to send this subpoena to Enki Counsel. Please fax the subpoena and this checklist indicating that all is correct. You should receive a response within 72-hours.**

Date Sent: _____ Med. Rec. Staff : _____
(PRINT NAME)

- If any of the above items are not checked return the Subpoena to the sender with a completed Subpoena Return Letter.**

Date Sent: _____ Med. Rec. Staff : _____
(PRINT NAME)

- Make sure that you do not release any information without receiving payment. Please complete an invoice based on the fee schedule posted by the Corporate office.**

ENKI HEALTH & RESEARCH SUBPOENA CHECKLIST

PURPOSE: To ensure that all subpoena's being forwarded to Enki's Counsel are valid for review.

PROCEDURE:

1. When a subpoena for records is received the Medical Records clerk must attach this checklist to the subpoena.
2. The clerk then must go thru the entire checklist.
3. If any item is not correct the Medical Records clerk must complete a return Subpoena letter and return the subpoena to the sending party.
4. If the subpoena is valid, the subpoena can now be sent to Enki Counsel for final review.
5. The checklist should be attached to the back of the subpoena and filed as procedures indicate.

REMINDER:

When a subpoena for a staff or personal appearance is served at the clinic, please give the process server one of Enki Counsel's business card. We do not call the staff member or accept the subpoena. Inform your supervisor of the serving.

LETTERHEAD

Date:

To: _____

Re: Subpoena for the records of _____ Dated: _____

The Subpoena received is being returned or being held for the following reason(s):

Correct Name of the Clinic.

All records are held by the Clinic, no one staff member is the holder of such records. Please re-submit the subpoena with the correct name of the clinic as indicated below:

ENKI – Clinic Name
Clinic Street Address
Clinic City, CA Zipcode

Client indicated cannot be located.

Please resubmit with a SS# / DOB

Name of the person or entity to whom the records are to be released is not listed.

Date subpoena signed:

Is past one year.

Does not clearly indicate expiration date. Per HIPAA regulations the date must clearly indicate a specific expiration date.

Production date is less than 15 days after the date of receipt.

The type of records sought does not indicate Mental Health, Psychotherapy, or Psychiatric records.

Civil Subpoena only:

A Notice to Consumer is not attached, or

Proof of service for above is not attached

Proof of Service is not attached showing proof that either client or client's Attorney was notified of this request.

Payment for production has not been received. Please pay the enclosed invoice.

Comments:

Medical Records Clerk
Enki Health & Research Systems Inc.