

UNIVERSITY OF FLORIDA
INFORMATION PRIVACY POLICIES & PROCEDURES
HEALTH INFORMATION OPERATIONAL GUIDELINES

I. Uses and Disclosures: Subpoenas, Court Orders, Attorney Requests

A. POLICY

Rev. 06/01/2009

1. **Disclosures:** The University of Florida may disclose PHI in response to:
 - a) *An order of a court or administrative tribunal; or*
 - b) *A lawfully issued subpoena, discovery request, or other lawful process, that is not accompanied by a court order, if the University receives satisfactory assurance that reasonable efforts have been made to notify the patient who is the subject of the protected health information of the request.*
2. **Information Subject to More Stringent Laws:** Health information that is subject to privacy rules under specific state or federal laws (mental health, STD, HIV, etc.) will only be disclosed in accordance with those laws.
3. **Fees:** The University will charge a reasonable fee for copies of records.

B. DEFINITIONS

1. **See definitions for Primary Records and Shadow Records in the Glossary.**
2. **Lawfully Issued Subpoena:** a subpoena issued by or under the jurisdiction of a Florida or federal court. Subpoenas issued by other state courts will not be honored.
3. **Satisfactory Assurance:** a written statement and accompanying documentation demonstrating that the patient was made aware of the disclosure and any objections have been satisfactorily resolved. (See Disclosures for Judicial and Administrative Proceedings in the Privacy Management section of this manual for more details.)

C. PRIVACY REQUIREMENTS

The provisions of this section do not supersede other provisions of the federal privacy regulations or other state laws that otherwise permit or restrict uses or disclosures of protected health information.

D. PROCEDURES

1. **Records for Depositions:** Original health records may not be removed from UF or Shands facilities, either in response to a subpoena for deposition only, or for a deposition with production of records.
 - a) *UF personnel called for depositions may not take original records or copies of health records with them for use during a deposition.*
 - b) *Records must be subpoenaed or ordered by the court separately when production of the record is required for a deposition. Inform the deposing attorney prior to the deposition that the person being deposed will not be*

UNIVERSITY OF FLORIDA
INFORMATION PRIVACY POLICIES & PROCEDURES
HEALTH INFORMATION OPERATIONAL GUIDELINES

able to bring the record, and that Shands or UF, as the official record custodian, must be served with a valid subpoena or court order.

2. UF Gainesville – Processing Requests for Records:

- a) *If Shands HealthCare System is the custodian for your primary records, forward subpoenas, court orders, and attorney requests for health information to the Shands Health Information/Record Management Department (HI/RM).*
- (1) Clinics and departments that hold true “shadow records” must not use these records to respond to subpoenas, court orders, or attorney requests.
 - (2) If there are original materials in the shadow charts, make a note of the available documents and send it with the subpoena or request to HI/RM.
 - (3) HI/RM Release of Information specialists will ensure that all requested components (clinical and financial) that can legally be disclosed are included in the response.
- b) *If your clinic or department holds the primary records being requested, and you have a contracted record copying service, forward subpoenas, court orders, and attorney requests for disclosure of protected health information to your copying service representative.*
- (1) The representative for your area will assure that all requested components (clinical and financial) that can legally be disclosed are included in the response.
 - (2) Refer to other specific procedures for record copying in your area.
- c) *If your clinic or department holds the primary health records being requested, but you do not have a contracted record copying service, fax or email a copy of subpoenas, court orders, and attorney requests for disclosure of health information (only) to the Privacy Office to obtain permission to disclose the requested information.*
- (1) If the subpoena or authorization is determined to be valid, the Privacy Office will notify the clinic or department holding the primary records that the request for records may be processed.
 - (2) If permission to disclose information cannot be granted, based on deficiencies in the subpoena or invalid authorization, the Privacy Office will communicate with the record manager in the clinic or department to correct the problem.
 - (3) If the records include information about substance abuse, mental health, HIV/AIDS, or sexually transmissible diseases, see the response process for Super Confidential Records, below.

3. UF Jacksonville – Processing Requests for Records:

- a) *Immediately upon receipt, fax subpoenas to the UF HIPAA Compliance Manager to obtain permission to disclose the requested information. Track*

UNIVERSITY OF FLORIDA
INFORMATION PRIVACY POLICIES & PROCEDURES
HEALTH INFORMATION OPERATIONAL GUIDELINES

all movements of the subpoena in the IDX tracking system, according to procedure.

b) *The HIPAA Compliance Manager will verify that the subpoena is valid, according to current standards.*

(1) *If the subpoena is determined to be valid, the HIPAA Compliance Manager will notify the clinic or department holding the primary records that the request for records may be processed.*

(2) *If permission to disclose information cannot be granted, based on deficiencies in the subpoena or accompanying documentation, the HIPAA Compliance Manager will communicate with the person or entity requesting the information. Once the problem is corrected, the clinic or department will be notified so that the records may be processed. (See (1)) above).*

4. All other subpoenas or public records requests: Contact the Health Science Center Office of General Counsel for assistance.

5. Responding to Requests for copies of PHI – General Rules:

NOTE: If the requested records include Super Confidential Information, also follow the special-handling procedure below.

a) *Respond within 10 business days of receipt of the request.*

b) *Number each original page of paper records to be copied; number front and back of pages with documentation on both sides, counting each side as a separate page.*

c) *Calculate the fee to be charged for the copies from the table following. Notify the requestor of the amount, and wait for a response before beginning to copy the record.*

d) *Photocopy or print out only the portions of the record specifically requested.*

(1) *Attach a cover letter, including the number of pages copied and the amount charged and paid.*

(2) *If certification of the copies is requested, complete the University of Florida Certification of Authenticity form (See Forms). Do not complete certification forms supplied by persons or entities requesting the records.*

e) *Mail or deliver copies to the individual who requested the records:*

(1) *Send copies of records containing protected health information via First Class Mail, Return Receipt Requested; or*

(2) *Deliver copies of records in person; request a signed copy of your cover letter as a receipt for the delivery.*

f) *Place the subpoena, court order, or attorney request with authorization, a copy of the cover letter, a copy of the certification (if one was provided), and any return mail receipts in the patient's record from which the copies were made. Include a list of the documents that were sent.*

UNIVERSITY OF FLORIDA
INFORMATION PRIVACY POLICIES & PROCEDURES
HEALTH INFORMATION OPERATIONAL GUIDELINES

6. Requests for Super-Confidential Health Information: Records pertaining to Substance Abuse, Mental Health Conditions, HIV Testing, HIV/AIDS, Sexually Transmitted Diseases, and Genetic Information.

a) By Authorization from the Patient or Legal Representative:

- (1) Verify that the authorization includes the necessary specific permission to complete the request.
- (2) If the authorization is incomplete or non-specific, contact the patient and verify that he/she is aware of the contents of the record and that permission will be granted to release the requested information.
 - (a) *With the patient's permission, notify the requesting entity that the authorization does not meet requirements and request a more specific authorization; or*
 - (b) *Provide a copy of UF's Authorization form directly to the patient.*
- (3) When a valid authorization is obtained, process the health records according to the procedure above, and stamp the pages as appropriate (see below).

b) By Subpoena or Court Order:

- (1) Subpoenas: Super-confidential records cannot be released in response to a subpoena alone. The patient must also provide a signed authorization, specifically allowing the release of the requested information.
 - (a) *Contact the patient directly and request an authorization for the release of the information.*
 - (b) *Process the records according to the procedure above, and stamp the pages with the appropriate non-redisclosure statement (see below).*
- (2) Court Orders: Refer all court orders for the release of health information to the HSC General Counsel's Office.

c) Required Non-Redisclosure Statement: stamp the appropriate statement (following) on each copied page.

- (1) Mental Health Records, F.S. 394.459
"Confidential and Privileged Information for Professional Use Only"
- (2) Alcohol/Drug Abuse Records from federally assisted drug/alcohol rehabilitation programs, Federal Law 42 CFR, Part 2.13
"This information has been disclosed to you from records protected by Federal rules. Federal Regulation (42 CFR, part 2) prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by such regulations. A general authorization for the release of health or other information is NOT sufficient for

