



*Records and the Courts

Chapter 9

- *Chapter 9 focuses on records and their use in court proceedings.
- *The laws specify what constitutes a record; describe who has access to the records; prescribe who has control over the release of information

*Introduction

* Law do not do:

- * These laws do not instruct social workers and other providers of service about the substance of their records.
- * No guidance as to content, kind, or quality of the records that practitioners keep.
- * The laws also do not provide guidance as to what constitutes a “good” record.

* Introduction

- * A subpoena is a mandate for the submission of documents or the testimony of a witness in a court proceeding.
- * A subpoena duces tecum - may seek material such as records, notes, tapes recordings, or video recording of sessions or other types of documentation, like computer files, diaries, and even are work.

*Subpoenas

- * Subpoena ad testificandum - which is a legal order that requires individuals to testify at a deposition, trial, or other official proceedings.
- * Subpoena ad testificandum - Require a social worker to attend a court hearing to provide testimony during a trial.

* Subpoenas

- * When a social worker receives a subpoena, there are number of action that he or she should take.
- * Consult legal counsel
- * Discuss the subpoena with the client, for release of information
- * If no release then the Social Worker is required to protect the client's confidentiality.

***Subpoenas**

*HIPAA creates minimum legal requirements when subpoenas are issued for PHI.

* In some cases allows practitioners to disclose PHI

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*HIPAA and Subpoenas

- * Be aware of the State Laws
- * Laws differ from State to State

* Subpoenas and State Law

- *What actually constitutes the “record”
- *Some states use record custodians
- *Practitioners think about records differently than the way the law treats records.

*Defining The Record Under The Subpoena

- * Federal law does protect the privacy of individuals.
- * Word Record is defined differently by the particular law

* Subpoenas And Records Defined Under Federal Legislation

- * Definition of record is not the same under State legislation.
- * Social Workers also should be aware of variations between states.

* Subpoenas And Records Defined Under State Legislation

- * Value of keep personal notes
- * Personal notes considered personal property of the practitioners

* Personal Notes

- * In some States Personal Notes are controlled by laws.
- * When practitioners keep personal notes in accordance with the legal requirements of their states, their personal notes are not subject to discovery during court proceeding; otherwise they can be.
- * Make sure that you are up-to-date concerning the laws

* State Law and Personal Notes

- * Receive special treatment under HIPPA
- * Most Psychotherapy notes cannot be released.

* Psychotherapy Notes Under HIPPA

- * Social Workers may be able to claim a privilege against disclosing client information in a deposition or in the courtroom.
- * Privileges are created when a relationship between two individuals is deemed worthy of special legal protection. Page 275
- * Certain relationships legally protected.

* Privilege

- * You must determine how you will respond to legal request
- * You should be aware of the State of Federal Laws page 279

* Responses To Requests For Records

*Social workers must under the retention rules:

* Agency

* State

* Feds

*Retention of Records

- * Different retention for different records
- * Understand the Statues of Limitations
- * Have an understanding of Expungement of Records

* Retention of Records