

# SCHAUM LAW OFFICES

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**TO: MEMBERS OF THE LONG ISLAND JEWISH  
ORGANIZED MEDICAL STAFF**

*You receive a subpoena for the medical records of one of your patients. You are familiar, of course, with the HIPAA protections for privileged health information (PH) but you are confronted with a legal document and, the question then is, what to do?*

*Aside from the obvious – call your attorney – the practitioner should observe whether the subpoena has been issued by any attorney's office or by a judge or by specific court order. If by court order or by a judge you have no choice but to comply. If issued by an attorney you must comply with the rules set out by HIPAA regs.*

*HIPAA will permit disclosure but only if the subpoena sets forth that a good faith effort was made to give notice to the patient by the person issuing the subpoena and time has expired to challenge the request and no challenge in general has been made. In addition there must be a showing that a qualified protective order limiting the use of the material has been requested. You – the physician – may make an effort to inform the patient of the receipt of the subpoena and if no objection is raised you may release the records. Of course the same holds true if the patient furnishes you with a HIPAA release. In navigating the rules of compliance you must remain alert to the New York (and federal) regulations pertaining to the restriction*

*of the release of certain designated health information. Drug-alcohol treatment – HIV/AIDS mental health, as but a few examples of privileged health information.*

*We know it is stating the obvious – but – the HIPAA penalties are so severe that you should have a specific office protocol if a subpoena is received. It also makes sense to contact your attorney and have that professional take on the task to assure that you are insulated from any HIPAA missteps.*

*And – once again – remember – all subpoenas are not the same – they may have the same appearance but the key is in the issuing authority.*

*Respectfully submitted,*

*Schaum Law Offices*